



STATE OF CONNECTICUT
STATE BOARD OF EDUCATION



February 1, 2012

Senator Andrea L. Stillman, Co-Chair
Education Committee
Room 3105, Legislative Office Building
Hartford, CT 06106

Representative Andrew M. Fleischmann, Co-Chair
Education Committee
Room 3101, Legislative Office Building
Hartford, CT 06106

Senator Steve Cassano, Co-Chair
Planning and Development Committee
Room 2100, Legislative Office Building
Hartford, CT 06106

Representative Linda M. Gentile, Co-Chair
Planning and Development Committee
Room 2100, Legislative Office Building
Hartford, CT 06106

Re: Transmittal of Commissioner's Report in accordance with Special Act 11-9

Dear Senator Stillman, Representative Fleischmann, Senator Cassano and Representative Gentile:

Enclosed please find two items related to Special Act 11-9, An Act Concerning a Review of the Cost to Municipalities of State-Mandated Special Education Requirements: (1) the Commissioner's Summary Report; and (2) fiscal data addendum requested during the House debate on Special Act 11-9. The comprehensive research compilation and analysis which informed the Summary Report will be available in March, 2012. Thank you.

Sincerely,

Stefan Pryor
Commissioner of Education

SP:td

cc: State Board of Education
Charlene Russell-Tucker, Chief Operating Officer
Anne Louise Thompson, Chief, Bureau of Special Education

Box 2219 • Hartford, Connecticut 06145

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**Summary Report in Response to Special Act 11-9: An Act
Concerning a Review of the Cost to Municipalities of State-
Mandated Special Education Requirements**

February 1, 2012

**Submitted to the joint standing committees of the General Assembly
having cognizance of matters relating to education and municipalities**

**Connecticut State Department of Education
Stefan Pryor, Commissioner of Education**

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Acknowledgments

This report was produced by the Connecticut State Department of Education (CSDE), Bureau of Special Education.

The CSDE gratefully acknowledges the expert leadership provided by **Attorney Theresa C. DeFrancis**, who served as the lead author, researcher and facilitator of the work contained herein. Additionally, recognition is given to the following CSDE individuals who participated in the development of this report.

Eugene Croce, Manager, Bureau of Grants Management

Brian Mahoney, Chief Financial Officer, Finance and Internal Operations

Martin Rose, Manager, Information Technology

Charlene Russell-Tucker, Chief Operating Officer

Anne Louise Thompson, Chief, Bureau of Special Education

Valentina Atamanenko, Information Technology Analyst 2, Bureau of Information Technology

Kevin Chambers, Education Consultant, Bureau of Grants Management

Brian Cunnane, Education Consultant, Bureau of Special Education

Kevin Graham, Information Technology Subject Matter Expert, Bureau of Information Technology

Diane Murphy, Education Consultant, Bureau of Data Collection, Research and Evaluation

Maria Synodi, Education Consultant, Bureau of Special Education

John Watson, Education Consultant, Bureau of Data Collection, Research and Evaluation

Special appreciation is extended to the many organizations and individuals who commented on the federal/state comparison of mandates and assisted with the formulation of the Cost Survey as well as those who provided comments and opinions on the burden of proof. Further reference to the participation of these stakeholders is detailed in the text of the report.

Introduction

Special Act 11-9 requires the Commissioner of Education to conduct a comprehensive review of state-mandated special education requirements, including but not limited to, examining who is best suited to bear the burden of proof in determining whether a student is eligible for special education services and to submit a report to the joint standing committees of the General Assembly having cognizance of matters relating to education and municipalities on or before February 1, 2012. The report must identify each state-mandated special education requirement that exceeds the minimum required under federal law and the cost to municipalities of complying with each such mandate. Appendix A contains a copy of Special Act 11-9. Two studies were conducted as a result of Special Act 11-9: (1) the cost to municipalities of providing educational services in excess of Individuals with Disabilities Education Improvement Act (IDEA) requirements; and (2) examining who is best suited to bear the burden of proof in special education due process hearings determining whether a child is eligible for special education.

During the House Debate on Special Act 11-9, House members indicated they would like to see specific fiscal data included in the report. This fiscal data is being submitted as an addendum to this report and is titled *Fiscal Data Addendum to the Summary Report in Response to Special Act 11-9: An Act Concerning a Review of the Cost to Municipalities of State-Mandated Special Education Requirements*. The fiscal data is: (1) State Excess Cost grant over 10 years; (2) average per pupil expenditures projected for the current fiscal year; and (3) 10-year federal, state and local portion of special education expenditures.

Beyond IDEA:

Special Education in the Context of Federal and State Requirements

The provision of special education instruction and related services is not impacted solely by the requirements of the federal special education funding statute, the IDEA or by the requirements of the state special education statutes. Local and regional boards of education and the state must be in compliance with other federal and state requirements in addition to those requirements found in the IDEA.

Federal Requirements

Local and regional boards of education and the state have an obligation to be in compliance with Section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination on the basis of disability for children attending public elementary and secondary schools and the provision of a free appropriate public education to qualified children under Section 504) separate and apart from their respective obligations under the IDEA. Section 504 has requirements for the evaluation, identification and provision of a free appropriate public education to children with disabilities. Parents have the right to challenge decisions school districts make under Section 504 through the use of civil litigation. Unlike the IDEA, the state is not required to have an administrative hearing system in place to address Section 504 claims. Currently, school districts hire their own hearing officers and manage Section 504 hearings at the local level.

The No Child Left Behind (NCLB) Act of 2008 has affected the provision of special education to children with disabilities. Meeting the educational needs of children with disabilities and targeting the achievement gap between children with disabilities and their nondisabled peers is an articulated goal of the NCLB legislation. Access to the curriculum, the classroom and participation in state and districtwide assessments is built into the IDEA and state requirements for the provision of special education to children with disabilities.

State Requirements

Independent of the compliance issues attendant with a state remaining eligible for federal financial assistance under the IDEA, the state has an obligation under the federal and state constitutions and state statutes to provide an equal educational opportunity for children with disabilities to participate in the public school programs offered by local and regional boards of education. Education is a state, not a federal, obligation (see *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U.S. 176, 183 [1982]). The state has the authority to set standards for: the provision of special education, including defining categories of eligibility for services; criteria for the evaluation and identification of children with disabilities; the provision of services for eligible children; personnel standards; and a dispute resolution system if parents and school districts are unable to resolve their disputes concerning the provision of educational services to children with disabilities.

Connecticut has a long history of serving children with disabilities in the public schools. Well before Congress adopted Public Law 94-142, the Education for All Handicapped Children Act (EAHCA) of 1975, Connecticut established that the state had a duty to provide an equal educational opportunity to children with disabilities in the public schools. Connecticut established standards and prescriptive rules for the provision of educational services to children with disabilities. After P.L. 94-142 was passed, the state reviewed its statutes and regulations to determine if the state was in compliance with the EAHCA requirements.

While the state has amended statutory language to remain in compliance with IDEA, the framework for the provision of special education within the context of the state's responsibility to ensure equal educational opportunity for children with disabilities has gone largely unchanged since 1968. Revisions to the state special education regulations in 1980 resulted in the adoption of policies contained in the 1968 guidelines provided by the Connecticut State Department of Education (CSDE) for the provision of educational services to children with disabilities by school districts. This remains the state framework for the provision of special education according to state standards. A complete analysis of national and state-level activities concerning the provision of special education and related services to children with disabilities is contained in Appendix B of this report.

Study One: Cost to Municipalities for Providing Educational Services in Excess of IDEA Requirements.

This study required a two-step process that engaged stakeholders by: (A) determining state mandates in excess of the IDEA and (B) developing a Cost Survey to measure the fiscal impact of such mandates.

Step One: Analysis of the IDEA Requirements and State Statutes and Regulations

Analysis and Review of IDEA and State Mandates

In order to conduct the comprehensive analysis and review required by the act, the CSDE defined the minimum requirements of federal law as those requirements of the IDEA that the state must be in compliance with in order for the state to remain eligible for federal financial assistance under the IDEA. The CSDE reviewed the following to determine the minimum requirements of the IDEA:

- IDEA regulation Section 300.100 requires the state to submit a plan to the Secretary of Education that shows the state meets the conditions set forth in Sections 300.101 through 300.176 of the IDEA regulations.
- Assurances provided by the state in its annual IDEA Part B application to provide evidence that the state has policies and procedures in place that meet the conditions set forth in Sections 300.100 to 300.176 of the IDEA regulations.
- IDEA regulation Section 300.157 requires the state meet performance goals and indicators in order for the state to remain eligible for federal financial assistance.

As a result of the analysis, the CSDE organized the federal and state requirements as follows:

1. **Category 1:** State mandates in excess of those required for the state to remain eligible for federal financial assistance under the IDEA.
2. **Category 2:** State mandates where the IDEA allows the state to elect how the state will implement an IDEA requirement.
3. **Category 3:** State mandates in alignment with IDEA.
4. **Category 4:** State mandates not addressed in the IDEA. These state mandates address state implementation issues to ensure children with disabilities receive services to which they are entitled.

Appendix C contains a copy of the Federal/State Comparison of Mandates.

Stakeholder Participation

The following groups were invited to participate to comment on the federal/state comparison of mandates and to assist with the formulation of the Cost Survey used to determine the cost to municipalities and school districts of providing services consistent with IDEA and state mandates: the Connecticut Association of Boards of Education; the Connecticut Association of School Business Officials; Connecticut Association of Public School Superintendents; State Advisory Council on Special Education; and, the Connecticut Council of Administrators of Special Education. The CSDE held two meetings with stakeholders to discuss the best approach to conducting the fiscal review required by the Act (November 9 and December 9, 2011).

Step Two: Formulation of Cost Survey for School Districts

Based on meetings with stakeholders, staff of the Bureau of Special Education crafted a survey in the form of a series of questions, 50 in total, to ascertain from school districts the fiscal impact of Category One, Category Two and Category Four determinations of the federal/state mandate comparison as described above. Category Three was not included in the Cost Survey because Category Three requirements are in alignment with the IDEA. Appendix D contains a copy of the Cost Survey.

The Cost Survey asks if changing a state requirement would result in an increase, decrease or no measurable fiscal impact to school districts. The live survey was field tested in five school districts prior to going to all school districts.

One hundred and two (102) of 169 school districts submitted completed surveys by the established deadline. Returned surveys accounted for a return rate of 60 percent of districts reporting survey information. Within the District Reference Groups (DRG), the rate of return was as follows:

DRG A	6/9 for 66 percent
DRG B	13/21 for 61.9 percent
DRG C	15/30 for 50 percent
DRG D	16/24 for 66 percent
DRG E	24/35 for 68 percent
DRG F	12/17 for 70 percent
DRG G	9/17 for 52 percent
DRG H	4/9 for 44 percent
DRG I	2/7 for 28 percent

Where district responses to the survey question are statistically significant, it is noted with an asterisk. The results of the Cost Survey are as follows.

This chart compiles data on the three possible responses received for each question on the survey. The questions are asking the following, would eliminating this state regulation (that is in excess of IDEA) result in (columns in the chart):

1. A decrease in cost.
2. No measurable fiscal impact.
3. An increase in cost.

For each of the three responses above (for each question on the survey) there are three possible data points: (rows in the chart)

- a) percentage of the total number of LEAs that had available information for the question;
- b) the number of LEAs that provided a given response for that question; and
- c) the average dollar savings, \$0 impact, or the average dollar cost to those LEAs selecting that response (for that question).

When the percentage of responses for a question is **bolded**, it indicates that the response category is statistically significant and represents the majority of the LEA responses. For each question with a statistically significant response category, the associated cost data are reported.

In cases where none of the responses to the question represented a statistical majority, all of the associated average cost data are reported for consideration.

Table 1 -Category 1: State Mandates in Excess of IDEA Requirements Necessary for IDEA Compliance

	Decrease District Costs	No Impact	Increase District Costs
Question 1.1: Eliminate short-term instructional objectives from the IEP.	17.0%	79.5%*	3.4%
	15	70	3
		\$0 Impact	
Question 1.2: Eliminate type of transportation from the IEP.	13.0%	84.8%*	2.2%
	12	78	2
		\$0 Impact	
Question 1.3: Eliminate "other than educational reasons" residential placement identifier from the IEP.	4.8%	83.1%*	12.0%
	4	69	10
		\$0 Impact	
Question 2: Eliminating right to one free copy of the child's records.	39.8%	58.1%	2.2%
	37	54	2
	avg. \$3,918 savings	\$0 Impact	avg. \$1,087 additional
Question 3: Eliminate parental consent for private school placement. Requires due process if a parent refuses/revokes consent for placement.	28.2%	64.1%*	7.7%
	22	50	6
		\$0 Impact	
Question 4: Eliminate surrogate parent if student exits special education and allow for certain students in USD II.	5.6%	94.4%*	0.0%
	5	84	0
		\$0 Impact	
Question 5: Eliminate investigation of CT special education law violations from complaint resolution process.	29.5%	62.8%*	7.7%
	23	49	6
		\$0 Impact	
Question 6: Eliminate home/community performance and prescriptive/diagnostic teaching information from student evaluation for English Language Learners.	15.7%	83.1%*	1.2%
	13	69	1
		\$0 Impact	

	Decrease District Costs	No Impact	Increase District Costs
Question 7: Eliminate IEP review upon request of parent/other personnel.	47.5%	50.0%	2.5%
	38	40	2
	avg. \$32,070 savings	\$0 Impact	avg. \$30,000 additional
Question 8: Eliminate PPT meeting participation of out of district/private placement personnel.	37.5%	62.5%*	0.0%
	30	50	0
		\$0 Impact	

Table 2 - Category 2: State Mandates Where the IDEA Allows the State to Elect How the State Will Implement an IDEA Requirement

	Decrease District Costs	No Impact	Increase District Costs
Question 1: Eliminate services for 3-5 and 18-21 year olds.	95.5%*	4.5%	0.0%
	85	4	0
	avg. \$640,469 savings		
Question 2: Eliminate services for students not identified prior to adult incarceration.	17.8%	80.0%*	2.2%
	8	36	1
		\$0 Impact	
Question 3: Assign FAPE to noneducational agencies.	54.1%	45.9%	0.0%
	33	28	0
	avg. \$244,584 savings	\$0 Impact	
Question 4: Extend age range for developmental delay category.	0.0%	94.0%*	6.0%
	0	78	5
		\$0 Impact	
Question 5: Districts required to hold local level due process hearings (two-tiered hearing system).	1.9%	22.2%	75.9%*
	1	12	41
			avg. \$44,203 additional
Question 6: Use an alternative research-based procedure for learning disability identification rather than Scientific Research Based Instruction.	8.3%	84.5%*	7.1%
	7	71	6
		\$0 Impact	
Question 7: Eliminate requirement for related services personnel at all PPT meetings.	39.8%	59.0%	1.2%
	33	49	1
	avg. \$6,762 savings	\$0 Impact	avg. \$15,000 additional

Table 3 - Category 4: State Mandates Not Addressed in the IDEA
(These state mandates address state implementation issues to ensure children with disabilities receive services to which they are entitled.)

	Decrease District Costs	No Impact	Increase District Costs
Question 1: Eliminate mediation timeline.	3.4%	94.4%*	2.2%
	3	84	2
		\$0 Impact	
Question 2: Eliminate Advisory Opinion Process	7.5%	86.3%*	6.3%
	6	69	5
		\$0 Impact	
Question 3: Eliminate motion practice in special education due process hearings.	23.2%	68.1%*	8.7%
	16	47	6
		\$0 Impact	
Question 4: Eliminate postponements criteria for hearing dates.	11.8%	82.9%*	5.3%
	9	63	4
		\$0 Impact	
Question 5: Eliminate out of state attorneys from due process hearings.	7.6%	90.9%*	1.5%
	5	60	1
		\$0 Impact	
Question 6: Eliminate exhibit form.	27.6%	71.1%*	1.3%
	21	54	1
		\$0 Impact	
Question 7: Eliminate Burden of Proof.	67.6%*	30.9%	1.5%
	46	21	1
	avg. \$74,046 savings		
Question 8: Eliminate hearing officer comment.	7.8%	92.2%*	0.0%
	5	59	0
		\$0 Impact	
Question 9: Eliminate hearing officer case dismissal.	3.5%	87.7%*	8.8%
	2	50	5
		\$0 Impact	
Question 11: Eliminate gifted and talented and pregnancy.	53.4%	45.5%	1.1%
	47	40	1
	avg. \$94,025 savings	\$0 Impact	

	Decrease District Costs	No Impact	Increase District Costs
Question 12: Eliminate the requirements governing the emergency use of physical restraint or seclusion.	44.6%	54.3%	1.1%
	41	50	1
	avg. \$14,712 savings	\$0 Impact	
Question 14: Eliminate parental notification regarding special education law.	43.8%	56.3%	0.0%
	42	54	0
	avg. \$2,266 savings	\$0 Impact	
Question 15: Eliminate notice of referral.	19.4%	80.6%*	0.0%
	19	79	0
		\$0 Impact	
Question 16: Copy of IEP to parent.	9.3%	89.7%*	1.0%
	9	87	1
		\$0 Impact	
Question 17: Eliminate transportation requirements.	49.4%	49.4%	1.3%
	39	39	1
	avg. \$201,670 savings	\$0 Impact	
Question 18: Eliminate state agency placement grant.	9.5%	17.6%	73.0%*
	7	13	54
			avg. \$308,126 additional
Question 19: Eliminate grant for children on state owned or leased property.	0.0%	92.5%*	7.5%
	0	49	4
		\$0 Impact	
Question 22: Eliminate Commissioner approval for out of state placements.	2.7%	89.2%*	8.1%
	2	66	6
		\$0 Impact	
Question 26: Eliminate Excess Cost Grants.	5.0%	6.3%	88.8%*
	4	5	71
			avg. \$701,525 additional
Question 27: Eliminate telephonic prehearing conference.	26.9%	65.7%*	7.5%
	18	44	5
		\$0 Impact	
Question 28: Eliminate use of incorporated or endowed high schools.	0.0%	94.8%*	5.2%
	0	55	3
		\$0 Impact	

	Decrease District Costs	No Impact	Increase District Costs
Question 29: Eliminate ABA requirements.	62.2%*	36.6%	1.2%
	51	30	1
	avg. \$2,379 savings		
Question 30: Eliminate state requirements for education of homeless.	33.3%	62.3%*	4.3%
	23	43	3
		\$0 Impact	
Question 31: Eliminate state reimbursement for supervisory personnel.	0.0%	78.7%*	21.3%
	0	48	13
		\$0 Impact	
Question 33: Eliminate referral to PPT.	21.1%	76.3%*	2.6%
	16	58	2
		\$0 Impact	
Question 34: Using IDEA timeline for evaluation.	11.4%	73.9%*	14.8%
	10	65	13
		\$0 Impact	
Question 35: Eliminate trial placement.	1.1%	92.2%*	6.7%
	1	83	6
		\$0 Impact	

Study Two: Burden of Proof

Special Act 11-09 requires the CSDE to examine who is best suited to bear the burden of proof in special education due process hearings for eligibility determinations. The underlying questions presented in this report for review are twofold: First, should the State of Connecticut repeal the state regulation that allocates the burden of proof to the school district and follow the default rule in civil cases for assigning the burden of proof as dictated by the Court in *Schaffer v. Weast*, 546 U.S. 49 (2005)? Second, in the alternative, should the State of Connecticut adopt a burden of proof standard that takes into consideration the issues brought to the hearing and allocate the burden of proof based on the issues presented or based on other considerations such as equity in the hearing process, fairness in the hearing process, or perceptions of inequality among the parties in the development of evidence?

Burden of Proof Analysis

Staff of the Bureau of Special Education reviewed and analyzed:

- the United States Supreme Court decision in *Schaffer v. Weast*, 546 U.S. 49 (2005) including the briefs submitted by the petitioner, respondent and amici curiae;

- testimony provided during the 2007, 2009 and 2010 sessions of the Connecticut General Assembly on proposed bills to shift the burden of proof to the moving party;
- testimony provided to the October 2011 and November 2011 State Board of Education meetings on the burden of proof and the written comments submitted to the State Board of Education and CSDE in response to Special Act 11-9;
- relevant testimony provided to the CSDE during the public comment period on the March 2010 proposed revisions to the state special education regulations; and,
- law review articles and other scholarly articles on the issue of allocating the burden of proof.

The bureau requested the National Association of State Directors of Special Education (NASDSE) update the 2009 national survey the organization conducted on burden of proof standards in other states.

Stakeholder Participation

A stakeholders' meeting was convened on November 18, 2011, to discuss the charge to the CSDE in Special Act 11-9 on the burden of proof issue and to elicit comments and opinions on the burden of proof questions before the CSDE. Invited to participate were: the Connecticut Association of Boards of Education; the Council of School Attorneys; Connecticut Council of Administrators of Special Education; Connecticut Association of Public School Superintendents; State Advisory Council on Special Education; Connecticut Parent Advocacy Center; State Office of Protection and Advocacy; and, two attorneys in private practice representing parents in special education due process hearings. In addition to the invited participants, the Connecticut Association of School Business Officials asked to attend and was also invited.

What Does the Burden of Proof Mean?

The court in the *Schaffer* case describes the burden of proof as follows:

“The term “burden of proof” is one of the ‘slipperiest members[s] of the family of legal terms.’ 2 J. Strong, McCormick on Evidence, Section 342, p. 433 (5th ed. 1999) (hereinafter McCormick). Part of the confusion surrounding the term arises from the fact that historically, the concept encompassed two distinct burdens: the ‘burden of persuasion,’ i.e., which party loses if the evidence is closely balanced, and the ‘burden of production,’ i.e., which party bears the obligation to come forward with the evidence at different points in the proceeding...We note at the outset that this case concerns only the burden of persuasion, as the parties agree...and when we speak of burden of proof in this opinion, it is this to which we refer.” (p. 56)

The burden of proof, as stated by the court, is broken down into two elements. The *burden of production* means the party who has this burden must provide evidence during the course of the administrative hearing or court case to substantiate the facts of its case. This burden may shift during the course of the hearing or court case. If the party with the

burden of production meets its burden, the *burden of production* shifts to the other party; the other party must present evidence that will rebut the facts put into evidence by the first party (Dixie Snow Hefner, Esq., Perry A. Zirkel, Esq., *Burden of Proof Under the Individuals with Disabilities Education Act*, Individuals with Disabilities Education Law Report, Special Report No. 9, LRP Publications, 1993, p.3).

The *burden of persuasion* comes into play *after* the evidence is presented. This burden does not shift back and forth between the parties. If the parties have presented all of their evidence and each has met the burden of production, the hearing officer (in a due process hearing) or judge (in court case) must weigh the evidence to determine who is the prevailing party in the case, that is, which party should prevail on the issues presented for adjudication. The burden of persuasion helps the fact finder (hearing officer or judge) make a determination as to who should prevail if the evidence presented by both parties is equal and the fact finder cannot make a decision based on the evidence (Hefner, Esq., and Zirkel, Esq., p. 3).

Burden of Proof Standard in the IDEA

The IDEA does not contain a burden of proof standard. The lack of a burden of proof standard in the IDEA statute or regulations prior to the Supreme Court's ruling in *Schaffer* meant state and federal courts determined, on a case-by-case basis, what the burden of proof should be in those cases where such as assessment became necessary in order to determine which party to the case was the prevailing party on the merits of the issues raised. The Supreme Court accepted the *Schaffer* case on appeal from the Fourth Circuit Court of Appeals because there was a difference of opinion among the Circuit Courts of Appeal on which party to a due process hearing should bear the burden of proof.

Burden of Proof Standard in Connecticut

The CSDE revised the special education due process regulations in 1999. The regulations became effective in July 2000. In response to a Second Circuit Court of Appeals decision in *Walczak v. Florida Union Free School District*, 142 F. 3d 119, the revised regulations included a section assigning the burden of proof to school districts in all cases as described above. (See Section 10-76h-14 of the state regulations). After the Supreme Court issued its ruling in *Schaffer*, the CSDE was asked to amend its regulations to be consistent with the court's holding in *Schaffer*, placing the burden of proof on the moving party in special education due process hearings. To date, the CSDE has opted not to revise its administrative regulations to change the burden of proof to the moving party in a special education due process hearing. (See Circular Letter C-9, Series 2005-2006, which states in pertinent part: "As the IDEA leaves to the states the management of the hearing system and the law itself is silent on the burden of proof, the standard in Connecticut articulates a valid state policy that school districts are in a better position to defend the appropriateness of an IEP. Districts are in control of following the procedural requirements of the IDEA and of planning and offering an IEP which provides a child with an opportunity to derive meaningful educational benefit, the two criteria courts look at to determine whether an IEP is appropriate.") Appendix E contains Circular Letter C-9, 2005-2006 Series.

Burden of Proof Standards in Other States

In a letter to Attorney and State Board of Education member Stephen P. Wright on November 4, 2011, Attorney Andrew A. Feinstein stated school districts had the burden of proof in six states. Currently, Connecticut, Delaware, New Jersey, New York, Nevada, and West Virginia allocate the burden of proof to the school district. New York's statute assigns the burden of proof to the parent when the parent is seeking tuition reimbursement for a unilateral placement. The Connecticut, Delaware and West Virginia provisions predate *Schaffer*. New Jersey, New York and Nevada adopted their rules after *Schaffer* was decided.

Analysis of *Schaffer v. Weast*, 546 U.S. 49 (2005)

The full report provides an analysis of *Schaffer v. Weast*. In brief summary, there are five important concepts to take from *Schaffer*. First, the IDEA does not contain a burden of proof standard. Second, because the IDEA does not contain a burden of proof standard, the court defers to the common rule that absent a statute or regulation to the contrary, the burden of proof in civil cases falls on the moving party, the party seeking redress of its grievances. Third, the court declines to find any compelling reason for assigning the burden of proof to the school district in all cases. Fourth, because the state in which *Schaffer* originated does not have a statute or regulation that allocates the burden of proof, the court refuses to rule on whether this is permissible under the IDEA. It has been taken to mean that states may establish a burden of proof standard on their own. Lastly, what *Shaffer* does not address is whether the court's test for determining if a child's program and placement are appropriate under the IDEA found in *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U.S. 176, 183 (1982) is overturned by the Court's decision in *Schaffer*.

The parents in the *Schaffer* case attempted to persuade the court to exercise judicial discretion in assigning the burden of proof to the nonmoving party based on several considerations.

- Interpret the due process provisions found in the IDEA in light of its constitutional meaning and use the balancing test established in a criminal case *Mathews v. Eldridge*, 424 U.S. 319 (1976) to allocate the burden of proof. The court declined; burden of proof standards outside of the criminal area are not generally issues of federal constitutional concern.
- Use the *Pennsylvania Association for Retarded Citizens v. Pennsylvania*, 334 F.Supp 1257 (E.D. PA 1972) (*PARC*) and *Mills v. Board of Education*, 348 F.Supp 866 (D.D.C. 1972) (*Mills*) cases, which describe a burden of proof standard, to set such a standard for the IDEA. The court declined; Congress, when drafting the EHACA, took the procedural safeguards from both *PARC* and *Mills*, but declined to adopt the burden of proof standard from those cases when Congress had the opportunity to do so. "...even though Congress took procedural safeguards from *PARC* and *Mills*, and wrote them directly into the act, it does not allow the court to conclude...that Congress intended to adopt the ideas that it failed to write into the text of the statutes," *Schaffer*, p. 58. The *PARC* and, the

- Mills* case concerned the failure of the State of Pennsylvania and Washington, D.C. to make a public school education available to children with disabilities. Both cases established that children with disabilities have the right to a public school education under the equal protection clause of the federal constitution. *Mills* established a set of procedural protections for parents to ensure that any denial of a public school education would be done with due process of law.
- Placing the burden of proof on the district will further the purposes of the IDEA: placing the burden of proof on the school district will help ensure that children with disabilities receive a free appropriate public education from their public school districts. The court declined; There are very few cases where the evidence will be so equal that the fact finder will not be able to determine who the prevailing party is in the case. Second the court states that assigning the burden of proof to school districts is asking the court to assume that every IEP is invalid until the district demonstrates that the IEP is not invalid. The court opines that the IDEA does not support this finding. The IDEA relies on the expertise of school districts to meet the goals of the IDEA and, if the IDEA did not value the expertise of the school district, the IDEA would not have the “stay-put” provision where the child remains in their current educational placement pending due process, but would insist the child be placed according to the wishes of the parent.
 - Districts have and control all of the information on the child that is necessary for the adjudication of the case. The court declines to adopt this reasoning stating the IDEA contains procedural safeguard provisions that assist parents in having access to the information the parent needs to pursue their case against the school district including access to records and the right to an independent educational evaluation (access to an expert).
 - The states may determine to allocate the burden of proof through state statute or regulation as IDEA does not. The court does not rule on this issue, as it was not an issue in the case.

Summary of Concerns Expressed by Connecticut School Districts and Connecticut Parents on the Burden of Proof

School districts and parents expressed similar concerns regarding the burden of proof as those expressed by the petitioners, respondents and amici curiae in the *Schaffer* case.

- First, districts argue that the IDEA is silent on the burden of proof; the state should adopt the court’s reasoning in *Schaffer* and repeal the Connecticut regulation assigning the burden of proof to school districts. This would place the burden of proof on the moving party in due process hearings, that is, the party filing for the hearing. Parents respond that placing the burden of proof on the moving party means that parents, who file the majority of hearing requests, will have to meet the burden of proof standard, which will further exacerbate the imbalance of power between school districts and parents. The state is able to adopt a burden of proof standard that is different from that articulated in *Schaffer*; the state regulation should remain as is.
- Second, districts argue parents have adequate procedural safeguards to enable the parent to secure the information necessary to present evidence to support claims

that will be presented to a hearing officer for adjudication, specifically access to the child's education records and independent educational evaluations (IEE). Districts note the increase in the requests for IEEs, which means the district pays for the expert to be used by the parent to challenge the district's services to the child. Parents respond the procedural safeguards in place do not provide them with adequate access to information necessary to support their claims; parents argue that they continue to have difficulty securing copies of their children's educational records in a timely fashion and also districts routinely obstruct the parent's right to an IEE by ignoring the request for the IEE, failing to file for due process in a timely fashion to defend the district evaluation and setting criteria for the selection of evaluators that are in violation of IDEA standards. In addition, parents argue districts further impede their ability to secure adequate IEEs by restricting the amount of time the parent's evaluator may observe the child in the district setting which compromises the evaluation.

- Third, districts argue having the burden of proof on school districts means the district must prove it has provided a free appropriate public education (FAPE) rather than assuming the district has done so. Parents argue it is the district that is required under the IDEA to provide FAPE, not the parents. Placing the burden on districts assures districts offer FAPE and holds districts accountable for meeting the standard of appropriateness, that is, they have followed the procedural requirements of the IDEA and the IEP offered is reasonably calculated to enable the child to receive more than a minimal educational benefit.
- Fourth, districts argue placing the burden of proof on school districts drives up the cost of litigation, means longer hearings and diverts district financial resources to litigation that could be better used on providing direct services to all children in the district. Parents argue they do not have the financial resources to hire lawyers and expert witnesses to challenge school district programs.

Review of Connecticut Data Responsive to District and Parent Concerns

The CSDE analyzed various data responsive to the arguments offered by districts and parents. The data reviewed are due process hearing statistics, cost to the districts to have the burden of proof on districts, demographic data on children with disabilities specifically looking at the poverty factor, access to representation, complaint investigations on access to educational records and IEEs and a review of due process hearing decisions addressing the burden of proof standard.

Due Process Statistics

The dispute resolution data reported below is for the 2009-10 school year to coincide with the fiscal data reported by the school districts in the Cost Survey. A snapshot of dispute activity is being provided, not a longitudinal study of trends over time.

The breakdown of the dispute mechanisms used to resolve issues between school districts and parents is as follows: mediation was used in 43 percent of the cases filed; hearings were used in 32 percent of the cases filed; and complaints were used in 25 percent of the cases filed for the 2009-10 school year.

NOTE: Individual cases may have more than one issue presented. For example, a case on private day placement may also involve compensatory education. The number of issues presented, therefore, is greater than the total number of cases reported. A review of the issues presented for resolution during the 2009-10 data year (school year) indicates the following:

Issue	Frequency
Private Day Placement	57
FAPE	52
Compensatory Education	45
Evaluation	45
Related Services	30
Unilateral Placement	28

Hearing Requested by	Frequency	Percent
LEA	26	12.56
Parent	172	83.09
Student	3	1.45
Surrogate Parent	6	2.9

Issues	Complaints	Mediations	Hearing Requests	Adjudicated Hearings
Procedural Safeguards	30	4	6	2
Failure to implement IEP	20	11	13	2
FAPE	20	10	42	6
Evaluation	17	31	37	1
Program Services	14	7	5	2
Educational Records	9	4	5	1
Eligibility	7	21	21	1
Private Day Placement	7	49	40	4
Child Find	6	11	3	0
IEE	4	14	15	1

Issue	Frequency
Private Day Placement	98
Unilateral Placement	92
Evaluation	45
Residential Placement	39
Related Services	35

Summary of District Responses to Cost Survey on Burden of Proof

As indicated in Table 3, 67.6 percent of the districts responding to the Cost Survey indicated local costs would be decreased if the burden of proof standard in special

education due process cases was shifted to the moving party. A total of \$3,406,139 from 46 districts was reported as a cost savings for an average cost savings of \$74,046 per district.

The Cost Survey also asked the following question: “If the burden of proof were on the party requesting the hearing, would the district have made a different decision about negotiating settlements in cases filed for either mediation or hearing during the 09-10 school year?” Forty-five districts responded yes, the district would have made a different decision about negotiating settlements; 22 districts responded no, the decision would have remained the same; and 35 districts indicated information was not available to respond to this question.

Demographic Data on the Poverty Factor for Children with Disabilities

The briefs submitted by the petitioners in the *Shaffer* case, the amici briefs supporting the petitioners in the *Shaffer* case and several submissions made to the CSDE cited the Special Education Longitudinal Study (SEELS), released September 2002. See SEELS Home on the Web site located at www.seels.net/grindex.html.

In the report “The Children We Serve: The Demographic Characteristics of Elementary and Middle School Students with Disabilities and Their Household,” statistics are given, based on the SEELS study that identify that more than one-third (36 percent) of students with disabilities live in households with incomes of \$25,000 or less, compared with 24 percent of children in the general population. This report is located on the SEELS Web site noted above.

Connecticut statistics for the 2007-08 school year are in alignment with the SEELS data collected over the 2000-06 school years in that a little over one-third of the students eligible for special education in Connecticut are in poverty. Over the last four years, Connecticut shows a steady growth in the percentage of students with disabilities in poverty. This means, for the 2010-11 school year, 2 out of 5 families in Connecticut with children eligible for special education live in poverty (Strategic School Profile Data, CSDE 2007-08 to 2010-11). It is often challenging for these families to secure free or low cost legal aid or to be able to afford a private attorney to represent them in a special education due process hearing.

Correlating Income Measure of Free or Reduced Priced Lunch with the Filing of Due Process Hearing Requests

In 20 percent of hearing requests filed, the student was eligible for free or reduced price lunch making free or low cost legal services representation possible if the services are available in the state.

Availability of Free or Low Cost Legal Services in Connecticut

Several low cost and free legal services organizations in Connecticut were contacted to verify statements made in testimony and in written submissions to the CSDE that free or low cost legal services for low-income families was scarce to nonexistent in Connecticut.

Due to cutbacks in IOLTA (Interest on Lawyer's Trust Accounts) and other unrestricted funding, several legal services organizations rely on juvenile justice funding to maintain current staffing levels. The case requirements of the various funding sources, in addition to referrals for nongrant/contract funded cases, prevent the legal services organizations from providing full representation to all families with students in need of education assistance. During 2011, for example, New Haven Legal Assistance Association Inc., provided full representation in only 55 percent of its education cases.

The Connecticut Parent Advocacy Center indicates in its experience over time, there is virtually no representation for low-income families; middle class families struggle to advocate for their children as well.

Complaint Investigations

Access to Education Records

For the 2009-10 school year, 13 complaints were received related to parental access to education records. The violations alleged were failure to provide records within five days of the request for the record (in compliance with a state requirement), failing to maintain educational records, failing to send the entire educational record upon request and maintaining inaccurate records. Eleven cases were investigated; nine investigations resulted in findings the district violated the IDEA and corrective actions were issued; two cases resulted in no findings of noncompliance; and two cases were withdrawn.

Access to Independent Educational Evaluations

For the 2009-10 school year, eight complaints were received related to parental access to IEEs. Five cases were investigated; three cases were withdrawn. In the five cases investigated, two resulted in findings that the district had violated the IDEA and corrective actions were ordered. One case concerned the district's guidelines for securing an IEE; the complaint found the district guidelines violated IDEA and were inconsistent with the parent's right to an IEE. Corrective action was ordered requiring the district to revise its guidelines to be consistent with IDEA. In the second case, the parent requested an IEE and the district failed to go to a hearing to defend its evaluation. A violation was found that the district failed to initiate a hearing when they refused to pay for the requested IEE. The district was ordered to train staff to understand district responsibility when a parent requests an IEE and to reimburse the parents for the cost of the IEE.

Review of Due Process Hearing Decisions—Burden of Proof Standard

From the 2005 through 2011 data years (fiscal year), there were 120 fully litigated due-process hearing decisions. A review was conducted of these cases to determine the impact of the burden of proof being placed on school districts as per the Connecticut regulations. Summarizing the cases reviewed under the current state regulation regarding the burden of proof, once the parent, as the moving party in the case, presented sufficient evidence to substantiate claims the school district had not offered an appropriate program for the child, the school district responded to those claims and showed by a "preponderance" of the evidence the district had, in fact, followed the procedural requirements of the IDEA and offered an IEP that conferred more than minimal educational benefit on the child. Once the parents stated a claim and the claim was found

to have merit, the school district defended the appropriateness of its IEP. If the school district was unable to do this, the parent prevailed in the case. If the hearing officer had not been able to make a decision based on the evidence presented because the evidence was equal, the parent would have prevailed in the case. In no case reviewed did the hearing officer find the parents and the school district presented an equal amount of evidence, which, in turn, did not allow the hearing officer to rule in favor of the parents or the school district based on the evidence presented. In other words, no case was decided in favor of the parent because the evidence presented by the parent and school district was equal.

Regardless of which party has the burden of proof, the district has an obligation to provide a free appropriate public education to eligible children. Districts must be rigorous in their procedural compliance with IDEA and state mandates, and offer eligible children appropriate programs and services. Within the context of the hearing process, the need for the parent to state a viable claim alleging the district did not provide an appropriate program and for the school district to present enough evidence to a hearing officer to allow the hearing officer to determine the school district has met the *Rowley* standard for appropriateness remains the same regardless of which party has the burden of proof.

School districts and parents articulated placing the burden of proof on one or the other party to a special education due process hearing carries great challenges and disadvantages for the party to whom the burden of proof is assigned. School districts indicated this has an impact on how school districts view their cases and how the districts will proceed to resolve the issue presented, (i.e., through settlement discussions or proceeding to a hearing). Parent representatives indicated placing the burden of proof on one or the other party would not alter their choice of remedies to resolve disputes with school districts as they would continue to utilize settlement discussions or hearings as appropriate to the case presented.

Conclusions and Recommendations

IDEA Requirements and State Mandates

Summary of Results

The CSDE organized the review of federal and state requirements into four categories. The Cost Survey examined state mandates in three of the four categories: (1) Category One: state mandates exceeded IDEA requirements for states to remain eligible for federal financial assistance under the IDEA; (2) Category Two: state mandates where the state is allowed to elect how it will implement an IDEA requirement; and (3) Category Four: state mandates not covered in the IDEA which address state implementation issues to ensure children with disabilities receive the services to which they are entitled. The category of requirements not examined for cost to districts was Category Three: state mandates which are fully in alignment with IDEA and do not exceed IDEA requirements. Therefore, no data was collected on the survey to be reported here.

Fifty questions were asked in the Cost Survey with one question requiring three responses for a total of 52 responses. The following is a summary of these results.

Summary of Cost Survey Responses and Statistical Significance of Results

Response Selection	Responses
Increase	3
Decrease	3
No measurable impact	30
Statistically not significant response	8
No fiscal response required from district	8
Total Responses	52

Category One Responses to the Cost Survey: State Mandates in Excess of IDEA Requirements Necessary for IDEA Compliance

Eight state requirements were identified that are in excess of the IDEA requirements necessary for the state to remain in compliance with IDEA and therefore eligible for the IDEA grant. Districts responded that in six out of the eight requirements there would be no measurable fiscal impact if the state requirement were eliminated. In two of the eight state requirements (eliminating the parental right to one free copy of the child’s records and IEP review upon the request of the parent or school personnel), the districts responded there would be some cost savings to the districts if the state requirements were eliminated; however, in both cases the number of districts indicating there would be a cost savings is not statistically significant from the number of districts that indicated there would be no measurable fiscal impact.

Category Two Responses to the Cost Survey: State Mandates Where the IDEA Allows the State to Elect How the State Will Implement an IDEA Requirement

The IDEA gives states the ability to elect how an IDEA requirement will be implemented in the state. Seven state requirements were so identified. In three of the seven requirements, districts indicated no measurable fiscal impact would result if the state changed the way the requirement was implemented and this result was statistically significant for the responses given. In two of the seven requirements (assigning the provision of a free appropriate public education to noneducational agencies and eliminating the requirement for related services personnel to attend all PPT meetings), district responses indicated there were no statistical significance between a decrease in costs and no measurable fiscal impact if the state changed the way the requirement was implemented.

Districts indicated if the state eliminated services for 3-5-year-olds and 18-21-year-olds, the districts would save on average \$640,469 and this response was statistically significant. Please note IDEA states the requirement that a “free appropriate public education be made available does not apply to 3, 4, 5, 18, 19, 20 or 21 year olds if providing services to such age ranges would be inconsistent with state law or practice, or the order of any court, respecting the provision of public education to children of those ages,” (34 CFR 300.300.102(a)(1)). Connecticut currently extends free school privileges

to all children until they reach the age of 21 or graduate from a high school or technical school.

In one of the seven requirements, districts indicated a decrease in district costs if the state implemented the requirement differently and this response was not statistically significant. Currently, districts assume full responsibility for the provision of special education to eligible children. If the state was to assign the provision of a free appropriate public education to noneducational agencies, districts indicated an average savings of \$244,584. This would mean that costs associated with providing services to children eligible for special education would shift from the school district to other service providers, including state agencies.

In one of the seven requirements, districts indicated if the state were to move from a single-tiered to a two-tiered hearing system, where the district would be required to hold a local level due process hearing, district costs would increase on average of \$44,203. This response is statistically significant.

Category Three Responses to the Cost Survey: State Mandates In Alignment with IDEA

No costs were requested by the Cost Survey for Category Three mandates. As indicated above, these mandates were not examined for cost to districts as they are fully in alignment with IDEA and do not exceed IDEA requirements. No reported conclusions or recommendations associated with these mandates are included in this report.

Category Four Responses to the Cost Survey: State Mandates Not Addressed in the IDEA

Thirty-five state requirements were identified in this category. Questions asked about eliminating eight of these requirements did not require responses from districts as it was assumed there would be no measurable fiscal impact if the state eliminated the requirement or the mandate went solely to the state administration of IDEA and state requirements. Elimination of twenty-seven mandates required a response from the districts. For 19 of those requirements, the districts responded there would be no measurable fiscal impact if a state requirement that addressed state implementation issues were eliminated and these responses were statistically significant for the questions asked.

In two of the twenty-seven requirements, districts indicated a decrease in district costs if the state requirements were eliminated and the responses were statistically significant for the question asked. Districts indicated if the burden of proof were shifted to the moving party, district costs would decrease on average \$74,046. Districts also indicated if the state requirements on the use of applied behavioral analysts were eliminated, districts would see a cost savings on average of \$2,379.

In four of the twenty-seven requirements, districts indicated a decrease in district costs, but these are not statistically significant for the questions asked. Districts reported a decrease in district costs if the state eliminated the state requirements for identifying gifted and talented students and for extending special education eligibility to pregnant students. The average savings reported is \$94,025. A decrease in district costs was reported if the state were to eliminate the requirements governing the emergency use of

physical restraint and seclusion at an average savings of \$14,712. Eliminating the state requirement that the district provide notification to parents regarding the state special education requirements would result in minimal savings to districts (reported average of \$2,266). Districts reported a decrease in district costs if the state were to eliminate the prescriptive requirements for providing transportation to children with disabilities, including the one-hour limitation on travel time. Districts reported an average decrease in costs of \$201,670.

In two of the twenty-seven requirements, districts reported an increase to district costs if two state requirements were eliminated: the state agency placement grant and the excess cost grant. Districts reported an average increase in costs of \$308,126 if the state agency placement grant were to be eliminated and an average increase in costs of \$701,525 if the excess cost grant were to be eliminated.

Policy Considerations

It is important to note that the IDEA has provisions the state must be in compliance with to remain eligible for federal financial assistance under the Act. The primary responsibility for developing and executing educational programs for children with disabilities rests with each state as the provision of a public education to all children is a state and not a federal responsibility. In *Board of Education v. Rowley*, 458 U.S. 176, 183 (1982), the Supreme Court determined the parameters of what constitutes an appropriate education under the IDEA (as cited in *Rowley*, the Education for All Handicapped Children Act) which remains the standard today. Under *Rowley*, the court leaves no doubt the provision of education is a state, not a federal responsibility.

Any review of mandate relief for municipalities and school districts will need to take into account how the state will provide special education and related services to children with disabilities within the context of the provision of a public school education. State funding to support districts financially is fundamental to assisting districts in meeting their obligations to provide a free appropriate public education to children with disabilities. The extent to which the state provides that funding is also fundamental to the ability of each district to offer appropriate services to eligible children.

Substantive decisions about the state's commitment to a public school education for children with disabilities would need to balance the obligation to provide appropriate services against the cost of doing so.

Special education is highly regulated at both the federal and state levels to ensure that students with disabilities receive the services to which they are entitled. Their parents have the ability to participate in the design of those programs and services and have the ability to challenge the services offered to their children. School districts have a significant challenge in ensuring that children with disabilities are provided with an array of program and services to meet their needs consistent with federal and state mandates and to provide an equal educational opportunity to all children attending public school. The body of case law that has developed under IDEA cases indicates that courts will look

to state standards in the absence of an IDEA standard to determine if a child has been provided with an appropriate education.

Burden of Proof

The CSDE interprets the meaning of the phrase “best suited to bear the burden of proof” as encompassing two concepts: first, the financial cost to school districts and parents for engaging in a fully litigated due process hearing; and second, a balancing of the obligations of school districts to provide special education and related services to eligible children consistent with the IDEA and state requirements against the rights afforded to parents and children under the IDEA and state requirements.

Given this interpretation, there are several options to consider regarding the treatment of the burden of proof standard in special education due process hearings:

- Maintain the current regulation, which assigns the burden of proof to school districts in all cases.
- Revise the current regulation to place the burden of proof on the moving party, or repeal the current regulation, which would in effect place the burden of proof on the moving party. If this approach were selected, the CSDE would strongly recommend revisions to the state statutes or regulations to ensure parents have access to educational records, IEE and classroom observations. Such revisions should address the right of access to independent educational evaluations, including setting time limits for districts to respond to the request for the evaluation with the district forfeiting the right to defend their evaluation if they do not file in a timely fashion; require the submission of school district policies and procedures on securing an IEE for review by the CSDE to determine compliance with IDEA (in the alternative, the CSDE would create a model policy and mandate its use in all school districts); specifying the right of parents or parent expert to observe the child’s current program or proposed program; and penalties assessed against school districts for failure to provide educational records in a timely fashion.
- With respect to changing the burden of proof in eligibility determinations only, the same analysis as provided above would be appropriate. If the burden of proof were to be shifted to the moving party, the state should ensure parents have access to the information necessary to challenge the district’s findings concerning the child’s eligibility for special education.
- Consider a burden-shifting burden of proof standard that, on a case-by-case basis, would balance the rights of disabled children under the IDEA and impose a realistic mandate on school districts. The burden of proof would be allocated to take into account the nature of the due process complaint filed and the remedy being sought. Multiple models exist that involve burden shifting. The CSDE would convene a task force to review all of the models available and select a burden-shifting approach for consideration by the State Board of Education and would move to revise the state due process regulations accordingly.

Other Recommendation

The percentage of children with disabilities who are in poverty continues to increase in Connecticut. The availability of free or low cost legal services has declined significantly over the past several years. Free or low-cost legal resources for eligible parents should be available to provide parents with access to and assistance with filing complaints or pursuing mediation or hearings to resolve disputes over the provision of special education and related services to children with disabilities.

The Research Compilation and Analysis Report which informs this Summary Report will be available in March, 2012

Appendices



Substitute House Bill No. 6103

Special Act No. 11-9

AN ACT CONCERNING A REVIEW OF THE COST TO MUNICIPALITIES OF STATE-MANDATED SPECIAL EDUCATION REQUIREMENTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (*Effective from passage*) The Commissioner of Education shall conduct a comprehensive review of state-mandated special education requirements, including, but not limited to, examining who is best suited to bear the burden of proof in determining whether a student is eligible for special education services, and shall submit a report on or before February 1, 2012, to the joint standing committees of the General Assembly having cognizance of matters relating to education and municipalities. The report shall be submitted in accordance with the provisions of section 11-4a of the general statutes and shall identify each state-mandated special education requirement that exceeds the minimum required under federal law and the cost to municipalities of complying with each such mandate.

Approved July 8, 2011

Appendix B: Special Education Prior to the Enactment of the IDEA Predecessor Statute

National Level Activities:

The legislative and litigation history of special education takes into consideration compulsory school attendance laws and the exclusion of special education children based upon a lack of response to instruction or general attitudes that a disabled child's presence in school is too much of a disruption for other students and staff. This history is also derived from the civil rights movement going back to Brown v. Board of Education, 347 U.S. 483 (1954). The standard set in Brown, the constitutional guarantee of equal protection under the law found in the Fourteenth Amendment of the U.S. Constitution, set a precedent that led to changes in school policies and approaches to educating students with disabilities, namely that states may not deny any person within its jurisdiction equal protection under the law. Parent advocacy groups for children with disabilities multiplied at the national and local levels and used Brown to argue that services for children with disabilities be provided in the public schools. (See Mitchell L. Yell, David Rogers and Elisabeth Lodge Rogers, *The Legal History of Special Education: What a Long, Strange Trip It's Been!*, Remedial and Special Education, Vol. 19, #4, July/August 1998, page 220, located at: http://edweb.sdsu.edu/documents/people/jalvarado/sped681a/681articles/Issues_Found_Hx/Yell_et_al_Legal_Hx_98.pdf)

In the early 1970's, two cases further set the stage for individual states to adopt legislation mandating special education services in public schools. The Pennsylvania Association for Retarded Citizens v. Pennsylvania, 334 F.Supp 1257 (E.D. PA 1972), known as the PARC case, attacked state statutes in Pennsylvania that allowed for the exclusion of children with mental retardation from public school services. PARC established that children with mental retardation were able to derive benefit from a public school education and that public school education should not be limited to academic experiences. The case also argued that once the state determined that a free public school education should be made available to all children, children with mental retardation could not be denied access to free public education and training. The case was resolved by a consent agreement which mandated a free public school education for all children with mental retardation between the ages of 6 and 21 years of age and included the concept that providing services to children with mental retardation with their nondisabled peers was "most desirable". (See Yell, Rogers and Rogers, pp. 222-223)

After PARC, a class action lawsuit was filed in Federal District Court for the District of Columbia in the Mills v. Board of Education, 348 F.Supp 866 (D.D.C. 1972) case. Mills extended public school benefits to disabled children in Washington, D.C. based on equal protection claims, but also importantly addressed the need for procedural safeguards to guarantee that depriving a child of public school benefits was done with due process of law. The court addressed the need for the right to a hearing with representation; a record of that hearing; the use of an impartial hearing officer for the hearing; the right to appeal the hearing decision; the right to have access to the child's educational records; and the requirement that the parties be provided with written notice at all stages of due process. (See Yell, Rogers and Rogers, pp. 223)

The first major federal legislation to address the rights of children with disabilities in public schools came in the form of civil rights legislation in Section 504 of the Rehabilitation Act of 1973. Some uncertainties with respect to the extent to which children with disabilities were protected by the language of Section 504 were corrected through the Education Amendments of

1974 which ensured that civil rights protection was extended to persons with disabilities by including all the remedies, procedures, and rights contained in the Civil Rights Act of 1964. The regulations adopted under Section 504 have specific provisions for the provision of a free appropriate public education for “handicapped children” who attend public elementary and secondary schools. (See Yell, Rogers and Rogers, p. 223)

Federal funding for the training of teachers for the mentally retarded was present as early as 1958 (the Expansion of Teaching in the Education of Mentally Retarded Children Act of 1958). Subsequent bills passed by Congress provided federal funding for the education of children in the public schools and included the National Defense Education Act of 1958 and the Elementary and Secondary Education Act (ESEA) of 1965. An amendment to the ESEA of 1965 in the next year, Title VI, provided for funding for grants for programs for children with disabilities. In 1970, Title VI of the ESEA of 1965 was replaced with the Education for the Handicapped Act, which was to be the framework for most of the legislation which followed. The Education Amendments of 1974, P.L. 93-380, provided funding for disadvantaged and disabled children. In addition, this Act created the Bureau of Education for the Handicapped and established the National Advisory Council on Handicapped Children. The 1974 amendments required that each state receiving federal special education funding establish a goal of providing a full educational opportunity for all children with disabilities. (See Yell, Rogers and Rogers, pp. 223-224)

In 1975, Congress passed and President Ford signed into law the Education for all Handicapped Children Act of 1975, P.L. 94-142 (EAHCA). The EAHCA provided funding for the states to educate children with disabilities and required that states seeking federal funding provide services consistent with the Act including the right to nondiscriminatory testing, evaluation and placement procedures; that children with disabilities be educated in the least restrictive environment; requirements for due process; and the right to a free appropriate public education. P.L. 94-142 was subsequently reauthorized and revised in 1990 and the EAHCA was renamed the Individuals with Disabilities Education Act (IDEA). Revisions included the addition of autism and traumatic brain injury as specific categories of disability and added transition planning for students starting at age 16. The Act was reauthorized again in 1997 through the Individuals with Disabilities Education Act Amendments of 1997. Included in the revisions were specific procedures to address the discipline of children with disabilities; requirements for states to offer mediation to resolve disputes; and several revisions to the content of the IEP including mandating the participation of students with disabilities in district wide and state assessments. The IDEA was last reauthorized in 2004 in the Individuals with Disabilities Education Improvement Act. The 2004 revisions included: prohibiting states from requiring the use of a severe discrepancy between intellectual ability and achievement for determining if a child has a specific learning disability and permitting the use of a process based on the child’s response to scientific, research-based instruction or alternative research-based procedures for determining if a child has a specific learning disability; and, clarifying that parents could refuse the initial provision of special education services and districts were not allowed to file for due process to overcome the lack of parental consent in these cases. (See Yell, Rogers and Rogers, pp. 225-227)

The No Child Left Behind (NCLB) Act of 2008 has had an impact on the provision of special education to eligible children. The statement of purpose of the Act is as follows:

The purpose of this title is to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging state academic achievement standards and state academic assessments. This purpose can be accomplished by —

- (1) ensuring that high-quality academic assessments, accountability systems, teacher preparation and training, curriculum, and instructional materials are

- aligned with challenging State academic standards so that students, teachers, parents, and administrators can measure progress against common expectations for student academic achievement;
- (2) meeting the educational needs of low-achieving children in our Nation's highest-poverty schools, limited English proficient children, migratory children, children with disabilities, Indian children, neglected or delinquent children, and young children in need of reading assistance;
 - (3) closing the achievement gap between high- and low-performing children, especially the achievement gaps between minority and nonminority students, and between disadvantaged children and their more advantaged peers;
 - (4) holding schools, local educational agencies, and states accountable for improving the academic achievement of all students, and identifying and turning around low-performing schools that have failed to provide a high-quality education to their students, while providing alternatives to students in such schools to enable the students to receive a high-quality education;
 - (5) distributing and targeting resources sufficiently to make a difference to local educational agencies and schools where needs are greatest;
 - (6) improving and strengthening accountability, teaching, and learning by using state assessment systems designed to ensure that students are meeting challenging state academic achievement and content standards and increasing achievement overall, but especially for the disadvantaged;
 - (7) providing greater decision-making authority and flexibility to schools and teachers in exchange for greater responsibility for student performance;
 - (8) providing children an enriched and accelerated educational program, including the use of school wide programs or additional services that increase the amount and quality of instructional time;
 - (9) promoting school wide reform and ensuring the access of children to effective, scientifically based instructional strategies and challenging academic content;
 - (10) significantly elevating the quality of instruction by providing staff in participating schools with substantial opportunities for professional development;
 - (11) coordinating services under all parts of this title with each other, with other educational services, and, to the extent feasible, with other agencies providing services to youth, children, and families; and
 - (12) affording parents substantial and meaningful opportunities to participate in the education of their children.

See Section 1001, NCLB Act of 2008, available at:
<http://www2.ed.gov/policy/elsec/leg/esea02/pg1.html>

State Level Activities

Public education has long been a state, not a federal, responsibility. By 1918, compulsory school attendance laws were in place in all the states, however, children with disabilities were often excluded from public schools. Connecticut has a long history of providing educational services to children with disabilities, but consistent with other states throughout the 1940s, 50s and 60s, public education services for children with disabilities were not mandated and children with disabilities were routinely excluded from public school. Educational services in Connecticut were initially provided based on the child's category of disability and various agencies were given the responsibility and funding to provide services based on the child's disability. The former Bureau of Pupil Personnel and Special Education Services of the CSDE in several annual reports to the State Board of Education, called for:

...an intensive study...be made of laws relating to exceptional children, to develop recommendations for revisions which would remove undesirable variations and inconsistencies and which would promote educational programs and services which reflect the best in professional practice. Particular attention should be given to reimbursement formulae, categorization and labeling of pupils, and facilitating educational activities focused upon learning problems of exceptional children...intensive efforts must be made to extend educational opportunities for children who are socially and emotionally maladjusted and those who have perceptual and neurological impairments... (Annual Report of Bureau of Pupil Personnel and Special Education Services 1964-1965, June 1965, p. 1)

Similarly, the Annual Report provided to the State Board of Education in 1966-1967 noted “ new directions and basic developments” at the federal and local levels (at the local level, advocacy by organizations devoted to advancing education for children with disabilities). The Bureau noted in its report that the State Board of Education should consider:

- Acceptance of the principle that education has a responsibility for children who a few years ago would have been considered “too handicapped” and that, when appropriate, this responsibility should be met increasingly through local programs rather than placement of children in residential schools or institutions;
- Mandatory programs for all handicapped children who have identifiable learning disabilities;
- Financial assistance for special education for exceptional children extended by state legislation to include gifted and talented; and,
- Extension of programs to preschool age children. (Annual Report of Bureau of Pupil Personnel and Special Education Services 1966-1967, June, 1967, p. A-2)

The study called for in the 1964-65 report was commissioned by the State Board of Education in 1966. A research project was initiated. The project conducted a review of the “current statutory provisions for the education of children having exceptional learning problems...an analysis of current procedures, policies and problems which exist in relation to this legislation and its contribution to the development of adequate educational programs and services for exceptional children in Connecticut...” (Report on Study of Legislation Relating to the Education of Exceptional Children, University of Bridgeport for Connecticut State Board of Education, September 20, 1966, p. 1). The report reviewed the fragmented legislation that covered services to children with disabilities and ultimately recommended that state statutes be revised to “include all types of exceptionalities: the physically handicapped, the socially and emotionally maladjusted, the gifted and others...and for those institutionalized and/or hospitalized children receiving special educational assistance, all shall be eligible for public school instruction...the State Board of Education shall have the power to carry out the intent of this legislation by appropriate regulation...state funds shall be appropriated to support both the regulatory needs of this legislation and the programs at the local level...”, see Report on Study, p. 43.

According to former State Representative and Attorney Howard Klebanoff, who served as Chairman of the Education Committee of the Connecticut General Assembly in the 60’s and 70’s, Connecticut took notice of the activities at the national level including other states’ responses to PARC and Mills. The legislative review of national trends and the Report commissioned by the State Board of Education resulted in Connecticut’s passage of Public Act No. 627 of the 1967 Public Acts.

Public Act No. 627 of the 1967 Public Acts essentially adopted the recommendations of the study and made the provision of special education mandatory by public school districts. This law

defined the “exceptional child” as “a child who deviates either intellectually, physically, socially or emotionally so markedly from normally expected growth and development patterns that he is or will be unable to progress effectively in a regular school program and needs a special class, special instruction or special services.” “Children requiring special education” were defined as: any ‘exceptional child’ who is (1) mentally retarded, physically handicapped, socially or emotionally maladjusted, neurologically impaired, or suffering an identifiable learning disability which impedes his rate of development, which disability is amenable to correction or which rate or development may be improved by special education or (2) has extraordinary learning ability or outstanding talent in the creative arts, the development of which requires programs or services beyond the level of those ordinarily provided in regular school programs but which may be provided through special education as part of the public school system.

Each town was required to identify and determine the eligibility for special education of children residing in the district. “No school age child requiring special education shall be excluded or exempted from school privileges except with the express approval of the Secretary based upon appropriate professional advice...” The Secretary as used here means the Secretary of the State Board of Education, the Commissioner of Education. Within the category of “mentally retarded child”, children who required custodial care, who did not have clean bodily habits, whose responsiveness to directions or whose means of communication were unintelligible were excluded from services. Services were to be provided to preschool children commencing in 1969.

After the passage of Public Act 627 of the 1967 Public Acts, the CSDE adopted regulations and provided general guidelines for the provision of special education programs by the public schools. The regulations provided definitions for terms used in the provision of special education, including board of education; children whose instructional program is provided primarily by special education personnel; extraordinary learning ability; handicapped children; learning disability; special instruction; and special services. The regulations set parameters for the supervision and administration of special education which included setting supervisory ratios for special education and pupil personnel staff; requiring that children with disabilities participate in all aspects of the total school program within the limits of the child’s capacity as determined by the planning and placement team; establishing conditions for instruction; setting standards for physical facilities and equipment; class composition and size; a plan for identifying children, including preschool children, requiring special education; standards for the evaluation of children; and provision for the instruction of children at home for those who are unable to attend school due to illness, disability, pregnancy or if the parents refuse the special education program offered by the district. (General Guidelines for Special Education Programs, Sec. 10-76a-10-76g of the General Statutes, Connecticut State Department of Education, Bureau of Pupil Personnel and Special Educational Services, Hartford, August 1, 1968)

The due process hearing system was created through the enactment of Public Act 667 of the 1971 Public Acts. In 1975, the legislature added mediation as a method of resolving disputes between school districts and parents over the provision of special education services to eligible children (see Public Act 75-438).

Connecticut has a long history of serving children with disabilities in the public schools. Well before Congress adopted P.L. 94-142, the EAHCA, Connecticut established that the state had a duty to provide an equal educational opportunity to children with disabilities in the public schools. Connecticut established standards and prescriptive rules for the provision of educational

services to children with disabilities. After P.L. 94-142 was passed, the state reviewed its statutes and regulations to determine if the state was in compliance with the EAHCA requirements.

The first mention of the state revising its state statutes to come into compliance with the EAHCA occurred in the 1977 general assembly session when the state had to address the exclusion of “profoundly and severely mentally retarded” children from the provision of a public school education. At this time, the state designated the former Department of Mental Retardation as a special school district to assist in the provision of educational services for these children as local school districts did not have the capacity to serve this population. (See House of Representatives Transcript, Friday, June 3, 1977, pages 5848-5851.) Over the years, the state has amended the state statutes, as needed, to come into compliance with IDEA, including adding transition planning language to state statutes, exempting the final decision and order in special education hearings from the reconsideration provisions of the state administrative hearing procedures and adopting by reference the categories of disability that are included in the IDEA.

While the state has amended statutory language to remain in compliance with IDEA, the framework for the provision of special education within the context of the state’s responsibility to ensure equal educational opportunity for children with disabilities has gone largely unchanged since 1968. Revisions to the state special education regulations in 1980 resulted in the adoption of policies contained in the 1968 guidelines provided by the CSDE to towns for the provision of educational services to children with disabilities by school districts. This remains the state framework for the provision of special education according to state standards.

It is important to note that while the IDEA has provisions with which the state must remain in compliance in order to remain eligible for federal financial assistance under the Act, the primary responsibility for developing and executing educational programs for children with disabilities rests with each state as the provision of a public education to all children is a state and not a federal responsibility see Board of Education v. Rowley v Board of Education, 458 U.S. 176, 183 (1982) where the Supreme Court determined the parameters of what constitutes an appropriate education under the EAHCA. Under Rowley, the Court leaves no doubt the provision of education is a state, not a federal responsibility.

Summarizing Federal and State Mandates for Special Education

Section 504 of the Rehabilitation Act of 1973

State and local and regional boards of education have an obligation to be in compliance with Section 504 of the Rehabilitation Act (prohibiting discrimination on the basis of disability for children attending public elementary and secondary schools and the provision of a free appropriate public education to qualified children under Section 504) separate and apart from a state’s obligations under the IDEA. Section 504 has requirements for the evaluation, identification and provision of a free appropriate public education (FAPE) to children with disabilities. Parents have the right to challenge decisions school districts make under Section 504 through the use of civil litigation. Unlike IDEA, the state is not required to have an administrative hearing system in place to address Section 504 claims. Currently, school districts hire their own hearing officers and manage Section 504 hearings at the local level. Decisions of the Section 504 hearing officer are appealed to state and federal court.

The proper standard for determining what level of services is to be provided to children identified as qualified disabled for purposes of Section 504 in public elementary and secondary schools is whether or not the child has been provided with a free appropriate public education. 34 CFR Section 104.33(b) defines an appropriate education as the provision of regular or special education and related aids and services that: are designed to

meet the individual educational needs of children with disabilities as adequately as the needs of persons without disabilities are met and that are based upon adherence to procedures that satisfy the requirements of 34 CFR 104.34 to 104.36, inclusive (procedural safeguards). In addition, in order to meet the requirements for appropriateness under Section 504, the provision of educational services to a child must include adherence to the least restrictive environment requirement so that each child with a disability is educated with children without disabilities, to the maximum extent appropriate to the needs of the child with a disability; a periodic reevaluation of children who have been provided special education and related services must occur; nondiscriminatory evaluation and placement procedures need to be established to guard against misclassification or inappropriate placement of children; and, due process procedures are available which enable parents or guardians to review identification, evaluation and placement decisions which provide for notice, an opportunity for the parents and guardians to examine relevant records, an impartial hearing with opportunity for participation by parents or guardians and representation by counsel, and a review procedure. (Technical Assistance Presentation on the Application of Section 504 to Elementary and Secondary School Children, US Department of Education, Memo to Regional Civil Rights Directors dated April 21, 1992.)

Services traditionally thought of as available only to children identified as eligible for special education in accordance with IDEA may also be required for the provision of a FAPE to children who are identified under Section 504. Such services include extended school year and extended school day services; an equal opportunity to participate in nonacademic services and extracurricular activities; and before or after school day care and summer recreation programs run by a public school district, which may require related aids or services for the child; counseling services; and, transportation for extracurricular events. Because the concept of FAPE is based on the individual needs of each child with a disability, it precludes a school district from categorically excluding consideration of any appropriate nonmedical service.

No Child Left Behind (NCLB)

The state would need to continue to address issues of the low academic performance of children with disabilities on state-wide and local level assessments consistent with the requirements of NCLB and ensure that adequate yearly progress on state and district-wide testing is achieved for children with disabilities.

Equal Educational Opportunity Under Federal and State Constitutions and Statutes

Independent of the compliance issues attendant with a state remaining eligible for federal financial assistance under the IDEA, the state would continue to have an obligation under the federal and state constitutions and state statutes to provide an equal educational opportunity for children with disabilities to participate in the public school programs offered by local and regional boards of education. The state would have the authority to set standards for the provision of special education, including the definition of categories of eligibility for services; criteria for the evaluation and identification of children with disabilities; provision of services for eligible children; personnel standards; and a dispute resolution system if parents and school districts are unable to resolve their disputes concerning the provision of educational services to children with disabilities. Any state system independent of IDEA standards would need to be compliant with Section 504 of the Rehabilitation Act and address the academic performance issues of children with disabilities raised by NCLB.

Appendix C: Federal/State Comparison of Mandates

The Connecticut General Assembly passed and the Governor signed into effect Special Act 11-9 which requires the Connecticut State Department of Education (CSDE) to perform a comprehensive review of the state special education mandates. The act asks the CSDE to determine which state mandates are in excess of the federal requirements found in the Individuals with Disabilities Education Act (IDEA) and then to determine the cost to municipalities to implement those state mandates which are in excess of the “minimum required under the federal law.”

An analysis of the state and federal requirements for the provision of special education has been revised by the staff of the Bureau of Special Education as a follow up to the November 9, 2011, meeting to discuss this topic. The attached revision has been prepared for your use.

The analysis has been broken down into 4 general categories:

1. **Category 1:** State mandates in **excess** of those required for the state to remain eligible for federal financial assistance under the IDEA.
2. **Category 2:** State mandates where the IDEA allows the state to **elect** how the state will implement an IDEA requirement.
3. **Category 3:** State mandates in alignment with IDEA.
4. **Category 4:** State mandates which the **IDEA does not address**. These state mandates address state implementation issues to ensure children with disabilities receive services to which they are entitled.

The attached chart sets out the analysis used to make the above determinations.

The CSDE will cost out Categories 1, 2 and 4. The CSDE is currently developing a methodology and instrument to gather fiscal data necessary to conduct the required cost analysis. The CSDE will be back in communication with you following the development of this data gathering tool.

Connecticut: Federal/State Comparison of Mandates (December 2011)

Minimum IDEA requirements for the state to remain eligible for federal financial assistance in accordance with the IDEA				
State Eligibility Requirement for IDEA financial assistance (all citations are to the IDEA regulations)	Corresponding State Statute	Corresponding State Regulation	How does state address this requirement?	Category
300.100: Eligibility for Assistance: The state provides a plan that provides assurances the state has in effect policies and procedures to ensure the State meets the conditions of Section 300.101 to 300.176	None	None	The state has on file with the Office of Special Education programs the last state plan filed by the states in 1998. Annually, the state submits it IDEA Part B application for federal financial assistance under the IDEA which contains a set of assurances the state will implement the requirements of IDEA in order to remain eligible for IDEA grant funding.	Not applicable
300.101: FAPE requirement All children between the ages of 3 and 21, inclusive, including children with disabilities who are suspended or expelled from school have FAPE available. FAPE must be available for eligible 3 year olds on the child's 3 rd birthday. If child's 3 rd birthday occurs during the summer, the PPT determines when services will begin.	State statutes define special education as the provision of services at no cost to parents CGS Section 10-76a(4) State statute requires provision of services to eligible children ages 3, 4 and 5; requires the provision of services to school age children CGS Section 10-76a(5), 10-76d(b) State statute requires	State regulation require provision of services to eligible children ages 3, 4 and 5; requires the provision of services to school age children Sections 10-76a-1(3) and (4) of the state regulations State regulations require district to provide a free, appropriate public education for each child requiring special education Section 10-76d-1of the state	State provides an assurance in the annual Part B application to provide FAPE to all children with disabilities between the ages of 3 and 21, inclusive, including children who are suspended or expelled from school. Assurance #1	Category 2

	<p>provision of services until receipt of high school diploma or turning age 21 CGS Section 10-76d(b)</p> <p>School year defined as July 1 to June 30th CGS Section 10-259</p>	<p>regulations</p> <p>State regulation requires the provision of services until the end of the school year in which the child turns 21 See 10-76d-1(a)(7) of the state regulation</p>		
<p>300.102: FAPE Exceptions For children age 3,4,5, 18, 19, 20 or 21 if provision of services is inconsistent with State law or practice or the order of any court For children aged 18 through 21 who in their last educational placement prior to their incarceration in an adult prison were not identified as eligible and did not have an IEP. Exception does not apply if the child had received services under an IEP but who left school prior to their incarceration or did not have an IEP in their last educational setting, but who left school prior to their incarceration.</p>	<p>Section 10-15d makes all education statutes applicable to unified school districts. Potential includes child find obligations and provision of services to student not identified prior to incarceration in an adult facility. CGS Section 10-15d CGS 18-99a and 18-99b</p>	<p>No provisions in state regulation</p>	<p>State provides an assurance in the annual Part B application to provide FAPE to all children with disabilities between the ages of 3 and 21, inclusive, including children who are suspended or expelled from school. Assurance #1</p>	<p>Category 2</p>
<p>300.103. FAPE-Methods and payment State may use whatever state, local, federal and private sources are available to meet the requirements. State may use joint agreements between</p>	<p>The state assigns responsibility for the provision of FAPE to local and regional boards of education. Joint agreements with other agencies are not utilized in CT for the</p>	<p>Each board of education responsible for the provision of a FAPE to each eligible child for preschool and school-age eligible children. Section 10-76d-1 of the state regulations</p>	<p>State provides an assurance in the annual Part B application to provide FAPE to all children with disabilities between the ages of 3 and 21, inclusive, including children who are suspended or</p>	<p>Category 2</p>

<p>agencies involved for sharing costs of providing FAPE.</p> <p>Nothing relieves an insurer or similar third party from an otherwise valid claim to provide or pay for services to a child with a disability</p>	<p>provision of FAPE. CGS Section 10-76d</p> <p>The state statutes concerning special education do not relieve any insurer or provider of health or welfare benefits from paying any otherwise valid claim. CGS Section 10-76d(h)</p>		<p>expelled from school. Assurance #1</p>	
<p>300.104. Residential placement. If a child needs a residential placement in order to receive FAPE, the program must be at no cost to the parents of the child.</p>	<p>Each board is responsible for the tuition, room and board and other items necessary to the provision of special education. CGS Section 10-76d(e)(1)</p>	<p>Each board must provide FAPE to eligible children. Section 10-76d-1 of the state regulations.</p>	<p>State provides an assurance in the annual Part B application to provide FAPE to all children with disabilities between the ages of 3 and 21, inclusive, including children who are suspended or expelled from school. Assurance #1</p>	Category 3
<p>300.105. Assistive technology. Devices or services must be provided if called for in a child's IEP and if the child's PPT determines the device or service needs to be provided at home for the provision of FAPE, it shall be provided.</p>	<p>No provision in state statutes.</p>	<p>No provisions in state regulations.</p>	<p>State provides an assurance in the annual Part B application to provide FAPE to all children with disabilities between the ages of 3 and 21, inclusive, including children who are suspended or expelled from school. Assurance #1</p> <p>State IEP manual and model IEP form address use the assistive technology.</p>	Category 3
<p>300.106. Extended school year services (ESY). Extended school year services must be available if child requires such for the</p>	<p>No provision in state statute.</p>	<p>No provisions in state regulations.</p>	<p>State provides an assurance in the annual Part B application to provide FAPE to all children with disabilities between the ages of 3 and 21,</p>	Category 3

<p>provision of FAPE. District may not restrict ESY by category of disability or limit type, amount or duration of services. Must be at no cost to parent.</p>			<p>inclusive, including children who are suspended or expelled from school. Assurance #1</p> <p>SDE has provided guidance on ESY through a topic brief.</p>	
<p>300.107. Nonacademic services. Districts must take steps to ensure children with disabilities have an equal opportunity to participate in nonacademic and extracurricular activities</p>	<p>No provisions in state statutes.</p>	<p>Opportunity to participate in all aspects of school program, including graduation and all extra- curricular activities, to the limits of each child’s capacity as determined by the PPT. Nonacademic language missing. Section 10-76d-1(a) of the state regulations.</p>	<p>State provides assurance in the annual Part B application to provide FAPE to all children with disabilities between the ages of 3 and 21, inclusive, including children who are suspended or expelled from school. Assurance #1</p>	<p>Category 3</p>
<p>300.108 Physical Education. Phys Ed services specially designed if necessary, must be available to every child with a disability receiving FAPE. Each child with disability must be afforded the opportunity to participate in phys ed.</p>	<p>Special education means specially designed instruction developed in accordance with the regulations of the commissioner, subject to approval by the SBE offered at no cost to parents or guardians, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings and instruction in physical education and special classes, programs or services, including related services, designed to meet the educational needs of</p>	<p>Opportunity to participate in all aspects of school program, including graduation and all extra- curricular activities, to the limits of each child’s capacity as determined by the PPT. Section 10-76d-1(a) of the state regulations.</p>	<p>State provides an assurance in the annual Part B application to provide FAPE to all children with disabilities between the ages of 3 and 21, inclusive, including children who are suspended or expelled from school. Assurance #1</p>	<p>Category 3</p>

	exceptional children. CGS Section 10-76a(4)			
300.109. Full educational opportunity goal. The state has in effect policies that the state has established a goal of providing full educational opportunity goal to all children with disabilities, aged birth through 21, with a detailed timetable for accomplishing that goal.	No provisions in the state statutes.	No provisions in the state regulations.	State provides assurance in the annual Part B application to provide FEOG to all children with disabilities. Assurance #2	Category 3
300.110. Program options. Children with disabilities must have available to them the variety of educational programs and services available to nondisabled children including art, music, industrial arts, consumer and homemaking education and vocational education.	No provisions in state statutes.	Opportunity to participate in all aspects of school program, including graduation and all extra- curricular activities, to the limits of each child's capacity as determined by the PPT. Section 10-76d-1(a) of the state regulations. Districts must ensure all children requiring special education and related services have access to all career and vocational education programs available to children in the regular education program. (1) Vocational programs shall be provided for each child whose individualized education program requires such a program.	State provides assurance in the annual Part B application to provide FEOG to all children. Assurance #2	Category 3

		(2) Vocational programs shall contain an academic component. Section 10-76d-14(d) of the state regulations		
300.111(a) and (c). Child find. Districts must locate, identify and evaluate children residing in the state, including children who are homeless or wards of the state and children with disabilities attending nonpublic schools, regardless of the nature and severity of their disability and who are in need of special education and related services. Child find must also include children who are advancing from grade to grade and highly mobile children.	Districts required to identify and evaluate children within their jurisdiction CGS Section 10-76d(a)(1)	Children must be identified. Section 10-76d-6 of the state regulations. Children must be evaluated. Section 10-76d-9 of the state regulations.	State provides assurance in IDEA Part B application. Assurance #3 State policy and procedures manual requires child find for all children as described in IDEA.	Category 3
300.111(b). Use of term developmental delay. State may adopt a definition of developmental delay and determines age ranges (ages three through nine) to which such will apply.	"A child requiring special education" means any exceptional child who (C) is age three to five, inclusive, and is experiencing developmental delay that causes such child to require special education. CGS Section 10-76a(5) "Developmental delay" means significant delay in one or more of the following areas: (A) Physical development; (B) communication development;	"A child requiring special education" means any exceptional child who (B) is age three, four or five and is experiencing developmental delay, as defined in section 10-76a of the Connecticut General Statutes, that causes such child to require special education. Section 10-76a-1(4) of the state regulations		Category 2

	<p>(C) cognitive development; (D) social or emotional development; or (E) adaptive development, as measured by appropriate diagnostic instruments and procedures and demonstrated by scores obtained on an appropriate norm-referenced standardized diagnostic instrument.</p> <p>CGS Section 10-76a(6)</p>			
<p>300.112. IEP. An IEP or an IFSP that is developed, reviewed and revised for each child with a disability in accordance with Sections 300.320 through 300.324, except where parent refuses consent for the receipt of services.</p>	<p>Districts are required to prescribe appropriate educational programs for children eligible for special education.</p> <p>CGS Section 10-76d(a)(1)</p>	<p>Each child receives services in conformity with the child's IEP</p> <p>Section 10-76d-1(a)(3) of the state regulations</p> <p>Under the state regulations the IEP must include short-term instructional objectives for all students. Requires the type of transportation necessary be described in the child's IEP, a list of individuals responsible for implementing the IEP and in the case of a residential setting, whether such placement is being recommended because of the need for services other than educational. IDEA requires objectives only for children taking the alternate assessments and does not contain the other components.</p> <p>Section 10-76d-11 of the</p>	<p>State provides assurance in IDEA Part B application.</p> <p>Assurance #4</p> <p>State policy and procedures manual addresses development, review and revision of IEP.</p> <p>State IEP manual and state model IEP form.</p>	<p>Category 1. The IDEA does not require short-term instructional objectives for all children, nor does it require identification of the transportation to be provided, list of individuals responsible for implementing the IEP and in the case of a residential placement, whether such setting is being recommended because of the need for services other than education.</p>

		state regulations.		
300.113. Routine checking of hearing aids and external components of surgically implanted medical devices.	No provisions in state statutes.	No provisions in state regulations.	State provides assurance in IDEA Part B application to provide FAPE for all eligible children. Assurance #1	Category 3
300.114. Least restrictive environment (LRE) requirements. Each district must ensure that children with disabilities are educated with nondisabled peers to the maximum extent appropriate and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. State may not have a funding mechanism which encourages more restrictive placements.	No provisions in the state statutes.	Least restrictive environment means an educational environment which meets the needs of a child requiring special education and related services as set forth in the child's individualized education program and which, to the maximum extent appropriate to the child's needs, ensures that the child will be educated with children not requiring special education and related services. Section 10-76a-1(11) of the state regulations Children requiring special education are to be educated in the least restrictive environment. Section 10-76d-1(a)(5) of the state regulations.	State provides assurance in IDEA Part B application. Assurance #5 State policy and procedures manual addresses LRE. State IEP manual and state IEP form address LRE	Category 3
300.115. Continuum of alternative placements. Alternative placements must be available to children with disabilities; the continuum of placements must include	Special education means specially designed instruction developed in accordance with the regulations of the commissioner, subject to approval by the SBE offered	Districts must make program alternatives available including, but not be limited to, the following. (1) A program in which instructional services are	State provides assurance in IDEA Part B application. Assurance #5	Category 3

<p>instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions. The continuum requires the provision of supplementary aids and services such as resource room or itinerant instruction to be provided in conjunction with regular class placement.</p>	<p>at no cost to parents or guardians, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings and instruction in physical education and special classes, programs or services, including related services, designed to meet the educational needs of exceptional children. CGS Section 10-76a(4)</p>	<p>provided by the teacher or support personnel either in the child's classroom or another setting. (2) A program in which instructional services are provided through a combination of regular classroom and special classroom instruction. Section 10-76d-14(a) of the state regulations.</p> <p>Instruction must be available for children eligible for special education and regular education children who are in the hospital or are too ill to attend school who are at home. Section 10-76d-15 of the state regulations.</p> <p>Placement priorities include the public placement near the child's home, the school district the in which the child resides, another public school, regional school district, private facility, out of state. Section 10-76d-16 of the state regulations</p>		
<p>300.116. Placements. Placement decision is made by group of people, including the parents, and other persons</p>	<p>No provisions in state statutes.</p>	<p>Planning and placement team (PPT) defined as a group of certified or licensed professionals, who represent</p>	<p>State provides assurance in IDEA Part B application. Assurance #5</p>	<p>Category 3</p>

<p>knowledgeable about the child, the meaning of the evaluation data and the placement options, is made in conformity with the LRE provisions and the placement is: determined at least annually, is based on the child's IEP and is as close as possible to the child's home. Unless IEP calls for it, it must be in the school the child would attend if not disabled. Consideration given to any potential harmful effect or on the quality of services the child receives; child not removed from education in age-appropriate regular classrooms because of needed modifications in the curriculum</p>		<p>each of the teaching, administrative and pupil personnel staffs and who participate equally in the decision making process to determine the specific educational needs of the child and develop an individualized educational program for the child; persons knowledgeable in the areas necessary to determine and review the appropriate educational program for an exceptional child.</p> <p>Section 10-76a-1(15) of the state regulations</p> <p>Districts to review and, if appropriate, revise each child's individualized education program periodically but not less than annually. In addition, a review shall be made upon request of the parents or personnel working with the child, provided the child's educational performance indicates the need for a review.</p> <p>Section 10-76d-11(b) of the state regulations</p> <p>PPT responsible for developing, reviewing and revising the child's IEP</p>		
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		<p>Section 10-76d-12 of the state regulations</p> <p>Parents must participate in meetings to develop, review, revise the child's IEP Section 10-76d-12 of the state regulations</p>		
300.117. Nonacademic settings. Children with disabilities must be able to participate to maximum extent appropriate and be provided with supplementary aids and services as are necessary and appropriate for the child to participate in such activities including meals, recess, and services listed in 300.107	No provisions in state statutes.	<p>Opportunity to participate in all aspects of school program, including graduation and all extra- curricular activities, to the limits of each child's capacity as determined by the PPT.</p> <p>Section 10-76d-1(a) of the state regulations.</p>	State provides assurance in IDEA Part B application. Assurance #5	Category 3
300.118. Children in public or private institutions. State must ensure LRE is implemented effectively including making arrangements with public and private institutions	No provisions in state statutes.	No provisions in state regulations.	State provides assurance in IDEA Part B application. Assurance #5	Category 3
300.119. Technical assistance and training activities. State must have activities that ensure teachers and administrators in all public agencies are fully informed about their responsibility for implementing LRE and are provided with technical assistance and training	<p>State Education Resource Center to provide training and continuing education seminars</p> <p>CGS Section 10-4q</p> <p>The Special Education Resource Center may be conducted by the State Education Resource Center</p>	No provisions in state regulations.	State provides assurance in IDEA Part B application. Assurance #5	Category 3

necessary to assist them in this effort.	CGS Section 10-76q			
300.120. Monitoring activities. The state must conduct monitoring activities to ensure LRE is implemented by districts. If there is evidence the district makes placements that are inconsistent with LRE, the state must review the district's justification for such and assist in planning and implementing any necessary corrective actions.	The SBE provides for the development and supervision of the educational programs and services for children requiring special education. CGS Section 10-76b	The SBE shall conduct monitoring activities, program audits and/or fiscal audits as it deems necessary to ensure that each district complies with the requirements of the regulations. Section 10-76b-4(a) of the state regulations	State provides assurance in IDEA Part B application. Assurance #5	Category 3
300.121. Procedural Safeguards. The state has procedural safeguards in effect to ensure each district meets the requirements of sections 300.500 through 300.536. <u>Children with disabilities and their parents must be afforded the procedural safeguards.</u>				
300.500. Responsibility of SEA and other public agencies to ensure each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of Sections 300.500 through 300.536.	No provisions in state statutes.	See below.	State provides assurance in IDEA Part B application. Assurance #6 State has a model Procedural Safeguards document in use by all school districts State IEP document contains prior written notice form LEA IDEA Part B application Assurance Q2	Category 3
300.501. Opportunity to examine records; parent participation in meetings	Parent to be given 5 days prior notice of any PPT meeting conducted for the child, have right to be present at and participate in and have advisors of own choosing and at such person's expense to	Each district is required to inform parents of their rights to review and obtain records, to be fully informed of all evaluation results and to obtain an independent educational evaluation and to	State provides assurance in IDEA Part B application. Assurance #6 State has a model Procedural Safeguards document in use by all school districts	Category 1. Section 10-76d-18 of the state regulations gives parents the right to one free copy of the child's records as part of the parent's right to review and inspect the child's records.

	<p>be present at and to participate in such meeting at which educational program is developed, reviewed or revised</p> <p>CGS Section 10-76a(8)(A)</p>	<p>provide parents with a full explanation of all due process procedures available to parents.</p> <p>District policies and procedures on access to and maintaining confidentiality of records must be consistent with federal requirements.</p> <p>Section 10-76d-8 of the state regulations.</p> <p>Section 10-76d-18 of the state regulations</p> <p>District must take steps to ensure parents have the opportunity to participate in each meeting to develop, review or revise the IEP. Five school days written notice prior to PPT meeting, notice to specify purpose, time and location of the meeting and who has been invited.</p> <p>Section 10-76d-12(c) of the state regulations</p>	<p>LEA IDEA Part B application Assurance Q2</p>	<p>Request must be made in writing. The district has five school days to comply with the request. Exception is made for copyrighted information. Under the IDEA and FERPA, copies are made available to parents only if failure to provide the copies would effectively prevent the parent from exercising the right to review and inspect the records. This has been interpreted to mean the parent cannot physically come to the school to look at the record such as the parent has moved out of state.</p>
300.502. Independent educational evaluation	No provisions in state statutes.	Each district is required to inform parents of their rights to review and obtain records, to be fully informed of all evaluation results and to obtain an independent educational evaluation and to provide parents with a full explanation of all due process procedures available to	<p>State provides assurance in IDEA Part B application. Assurance #6</p> <p>State has a model Procedural Safeguards document in use by all school districts</p> <p>LEA IDEA Part B application Assurance Q2</p>	Category 3

		parents. Section 10-76d-8 of the state regulations.		
300.503 Prior notice by the public agency; content of notice	Requires 5 school days notice in writing to the parent before the board proposes to, or refuses to, initiate or change the child's or pupil's identification, evaluation or educational placement or the provision of a free appropriate public education to the child or pupil CGS Section 10-76d(a)(8)	Notice requirements addressed by Section 10-76d-8 of the state regulations.	State provides assurance in IDEA Part B application. Assurance #6 State policy and procedure manual addresses prior notice State IEP form addresses prior written notice State has a model Procedural Safeguards document in use by all school districts	Category 3.
300.504. Procedural safeguards notice. Procedural safeguards notice must contain a full explanation of all the procedural safeguards available under the IDEA(placement of children by parents when FAPE is at issue, state complaint procedures, parental consent, opportunity to examine records, participation in meetings, prior written notice, receipt of notices through electronic mail, mediation, due process hearings, transfer of parental rights at age 18, discipline and educational records	School district required to initiate due process if the parent refuses or revokes consent for a private school placement provided the placement is not the child's initial placement for services. CGS Section 10-76dh(a)(2)	Consent required from the parents if the PPT recommends a private school placement Section 10-76d-8 of the state regulations. Each district is required to inform parents of their rights to review and obtain records, to be fully informed of all evaluation results and to obtain an independent educational evaluation and to provide parents with a full explanation of all due process procedures available to parents. District policies and procedures on access to and	State provides assurance in IDEA Part B application. Assurance #6 State policy and procedure manual addresses confidentiality, prior notice, consent and discipline. State has a model Procedural Safeguards document in use by all school districts State IEP document contains prior written notice form LEA IDEA Part B application Assurance Q2	Category 1. IDEA does not require specific parental consent for private school placement. IDEA does require that if a state has consent requirement in addition to those in IDEA, the state must ensure the child is provided with FAPE if the parent withholds or revokes the consent requested.

		maintaining confidentiality of records must be consistent with federal requirements. Section 10-76d-8 of the state regulations. Section 10-76d-18 of the state regulations		
300.505 Electronic mail	No provisions in the state statutes.	No provisions in the state regulations	State provides assurance in IDEA Part B application. Assurance #6 State has a model Procedural Safeguards document in use by all school districts	Category 3
300.506 Mediation	Mediation available CGS Section 10-76h(f)	Mediation to be scheduled within 30 calendar days from date of the receipt of the request for mediation. Section 10-76h-5 of the state regulations	State provides assurance in IDEA Part B application. Assurance #6 State has a model Procedural Safeguards document in use by all school districts	Category 4. IDEA does not have a timeline for scheduling mediation.
Sections 300.507 through 300.518 Hearing procedures	Hearing procedures. CGS Section 10-76h	Advisory opinion. Process is available to parties to due process to have a “mini-hearing” with constraints on the extent of evidence submitted, including testimony and the time allowed for direct and cross examination. The advisory opinion process must be completed in one day. Section 10-76h-6 of the state regulations	State provides assurance in IDEA Part B application. Assurance #6 State has a model Procedural Safeguards document in use by all school districts	Category 3 Category 4: Advisory opinion process

		<p>Appointment of hearing officer; duty of hearing officer to schedule prehearing conference and manage the hearing including scheduling of hearing dates and the submission of evidence and oral testimony. Section 10-76h-7 of the state regulations</p> <p>Motion Practice. Procedures for parties participating in due process hearings to file motions for action by the hearing officer; types of motions allowed Section 10-76h-8 of the state regulations</p> <p>Postponements and extensions State operated under the Barbara R consent decree for years on the scheduling of due process hearings including specific standards for postponing or extending deadlines in hearings. The consent decree was incorporated into state regulations in 2000. Decision must be provided no later than 45 days after request for hearing subject to</p>		<p>Category 2 and 4: IDEA allows states to elect to use a single-tiered (state hearing officer) or two-tiered hearing system. CT has a single tiered hearing system. IDEA does not contain specifics on how the hearing officer manages the case once it is assigned to the hearing officer.</p> <p>Category 4</p> <p>Category 3 and 4</p>
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		<p>parties request for postponements or extensions. Very prescriptive requirements for requesting postponement. Section 10-76h-9 of the state regulations</p> <p>Expedited hearings. Provision for expedited hearings as required under various sections of IDEA. Section 10-76h-10 of the state regulations</p> <p>Hearing Rights Include the right to be accompanied and advised by counsel and by individuals knowledgeable with special knowledge or training with respect to children with disabilities, right to present evidence, confront, cross-examine and compel attendance of witnesses. Each party has a reasonable opportunity to submit evidence, as determined by the hearing officer. Each party may present evidence more than two years olds if it's required to rule on the issues presented and it meets evidentiary requirements.</p>		<p>Category 3</p> <p>Category 3</p>
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		<p>State regulations have provisions that allow out of state attorneys to practice in CT in front of the special education hearing officers Section 10-76h-11</p> <p>Exhibits, documents presented at the hearing; witnesses Disclosure of all documentary evidence, including evaluations and recommendations based on the evaluations 5 business days before the hearing. Hearing officer may bar introduction of evidence if party fails to comply. Exchange of witness lists required no later than 5 business days before the hearing. Parties responsible for notifying their witnesses of date, time and location of the hearing. Notice for calling school employees to testify. At request of either party, hearing officer will not review records until offered into evidence. Requirements for making exhibits. Section 10-76h-12 of the state regulations</p> <p>Conduct of hearing Hearing officer has authority</p>	<p>Category 4</p> <p>Category 3 and 4</p> <p>Category 3</p>
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		<p>to take reasonable measures to ensure hearings conducted in a fair and orderly manner. Hearing officer may bar individuals from the hearing if necessary to achieve order. If interpreter is needed, burden on party requiring such service to inform the due process unit of the need. All sessions of the hearing to be recorded in order to create a verbatim record. (The state pays for this service.) Hearing officer may order independent evaluation to be paid for by the district.</p> <p>Section 10-76d-13 of the state regulations</p> <p>Burden of production and proof; unilateral placement Party who filed for due process has burden of going forward with the evidence. The school district has the burden of proving the appropriateness of the child's program or placement or program or placement proposed by the public agency. Burden it to be met by a preponderance of the evidence except for discipline related hearings. Hearing officer may bifurcate the hearing on a unilateral</p>		<p>Category 4</p>
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		<p>placement. If the hearing officer determines the district program is appropriate, it is not necessary to inquire into the appropriateness of the parent's placement. If district program not appropriate, parent must prove appropriateness of the unilateral placement by a preponderance of the evidence. Section 10-76h-14 of the state regulations</p> <p>Evidence Sets standards for the receipt of evidence by the hearing officer. Consistent with submission of evidence under the IDEA. Section 10-76h-15 of the state regulations</p> <p>Decision, implementation, rights of appeal Decision of hearing officer to be final, decision may be appealed Stay of the decision shall be sought from court having jurisdiction over the appeal. Final decision may include comments by the hearing officer on the conduct of the proceedings. Hearing officer may issue findings of fact on</p>		<p>Category 3 and 4</p> <p>Category 3 and 4</p>
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		<p>the extent to which the parent has prevailed on any issue ruled upon by the hearing officer.</p> <p>Final decision, enforcement and appeal procedures shall be mailed to the parent, the district or legal counsel. Once personally identifiable information is removed, it shall be mailed to the SAC. Settlement agreement is not to be construed as a final decision of the hearing officer.</p> <p>Parent may notify the due process order if the order of the hearing officer is not being implemented by the district.</p> <p>Section 10-76h-16 of the state regulations</p> <p>Educational Placement during proceedings. Unless parent and district agree otherwise, child remains in current educational placement pending due process.</p> <p>Section 10-76d-17 of the state regulations.</p> <p>Default or dismissal Hearing officer may on their own, or on motion of a party, default or dismiss case if party fails to proceed with</p>		<p>Category 3</p> <p>Category 4</p>
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		<p>hearing, to participate in the prehearing conference, to adhere to due process regulations, to state a claim for which relief can be granted, to sustain its burden after presentation of the evidence or to appear at any properly scheduled hearing. If an order of default, the hearing officer may take evidence and issue such orders as may be necessary.</p> <p>Section 10-76h-18 of the state regulations</p>		
300.519 Surrogate parents	<p>Surrogate parent requirements</p> <p>CGS Section 10-94f to 10-94k, inclusive</p>	<p>Surrogate parent requirements</p> <p>Sections 10-94j-1 to 10-94j-8 of the state regulations.</p>	<p>State provides assurance in IDEA Part B application.</p> <p>Assurance #6</p>	<p>Category 1. The state allows surrogate parents to remain with a student if the student is exited from special education and provided services through a Section 504 plan and allows the appointment of a surrogate parent for certain students enrolled in USD 2</p>
300.520 Transfer of parental rights at age of majority	<p>No provisions in state statutes</p>	<p>Rights of parent transfer to student who has reached the age of majority.</p> <p>Section 10-76a-1(13) of the state regulations.</p>	<p>State provides assurance in IDEA Part B application.</p> <p>Assurance #6</p> <p>Model policy and procedures manual addresses transfer of rights</p> <p>State model Procedural Safeguards document addresses transfer of rights.</p>	<p>Category 3</p>

<p>300.503 through 300.536 Disciplinary procedures</p>	<p>Requirement for manifestation determination before child with disability expelled from school CGS Section 10-233d(i)</p>	<p>No provisions in state regulations, except expedited hearing procedures for discipline issues.</p>	<p>State provides assurance in IDEA Part B application. Assurance #6</p> <p>Model policy and procedures manual addresses discipline</p> <p>State model Procedural Safeguards document addresses discipline</p>	<p>Category 3</p>
<p>300.122. Evaluation. Children with disabilities must be evaluated in accordance with Sections 300.300 to 300.311. This includes the additional requirements for identifying a child with a learning disability and the use of SRBI in the LD evaluation process.</p>	<p>Evaluation procedures outlined in CGS Section 10-76ff</p>	<p>Evaluation procedures Section 10-76d-9 of the state regulations</p>	<p>State provides assurance in IDEA Part B application. Assurance #7</p> <p>State policy and procedures manual addresses evaluation.</p> <p>State guideline document on Identifying Children with Learning Disabilities (2009)</p>	<p>Category 2</p>
<p>300.123. Confidentiality of information. The state has policies and procedures that comply with 300.610 through 300.626.</p>	<p>Access to student's educational records. CGS Section 10-15b</p>	<p>Records requirements Section 10-76d-18 of the state regulations</p>	<p>State provides assurance in IDEA Part B application. Assurance #8</p> <p>Model policy and procedures manual addresses confidentiality.</p> <p>State model Procedural Safeguards document addresses confidentiality.</p>	<p>Category 1. Section 10-76d-18 of the state regulations gives parents the right to one free copy of the child's records as part of the parent's right to review and inspect the child's records. Request must be made in writing. The district has five school days to comply with the request. Exception is</p>

				made for copyrighted information. Under the IDEA and FERPA, copies are made available to parents only if failure to provide the copies would effectively prevent the parent from exercising the right to review and inspect the records. This has been interpreted to mean the parent cannot physically come to the school to look at the record such as the parent has moved out of state.
300.124. Transition of children from the Part C program to preschool programs. Children participating in Part C have smooth and effective transition to Part B services (preschool special education), by third birthday of a child, child has an IEP in effect, each district will participate in transition planning conferences	No provisions in the state statutes.	A preschool child requiring special education and related services is entitled to receive a free, appropriate public education on and after the child's third birthday, notwithstanding the fact that the third birthday occurs outside of the regular school year. Section 10-76d-1 of the state regulations	State provides assurance in IDEA Part B application. Assurance #9 State provides on-line information and training on transitioning from Part C to Part B State collects data on the delivery of FAPE by age 3 through the IEP document State monitors transition from Part C and implementation of IEP by age three through SPP indicator #11	Category 3
300.129 to 300.148. Services to children with disabilities placed by their parents in	Districts not required to provide services to parentally placed private school children	No provisions in state regulations.	State provides assurance in IDEA Part B application. Assurance #9	Category 3

<p>private schools where FAPE is not an issue</p> <p>Section 300.148 on parentally placed private school children where FAPE is at issue. Reimbursement on private school placement and limitation on reimbursement.</p>	<p>or children educated at home if parent does not consent to the services. CGS Section 10-184a</p> <p>Limitation on reimbursement contained in CGS Section 10-76h(d)(1)</p>		<p>State requires districts to provide assurance in LEA Part B application</p> <p>Limitation on reimbursement included in state model Procedural Safeguards Document.</p>	
<p>300.149. State responsibility for general supervision that Part B requirements are met including routine checking of hearing aids and external components of surgically implanted medical devices, state supervision, state complaint system, where state is the direct provider of FAPE, exception for prior state plans and state monitoring and enforcement of Part B requirements</p>	<p>The SBE provides for the development and supervision of the educational programs and services for children requiring special education. CGS Section 10-76b</p>	<p>The SBE shall conduct monitoring activities, program audits and/or fiscal audits as it deems necessary to ensure that each district complies with the requirements of the regulations. Section 10-76b-4(a) of the state regulations</p>	<p>State provides assurance in IDEA Part B application. Assurance #10</p>	<p>Category 3</p>
<p>300.150. State implementation of procedural safeguards. State must have in effect procedures to inform each district of its responsibility for ensuring effective implementation of procedural safeguards.</p>	<p>No provisions in state statutes.</p>	<p>No provisions in state regulations.</p>	<p>State policy and procedures manual</p> <p>State model Procedural Safeguards document</p> <p>LEA IDEA Part B Application, Assurance Q2</p>	
<p>300.151 through 300.153. State complaint system.</p>	<p>No provisions in state statutes.</p>	<p>No provisions in state regulations.</p>	<p>State provides assurance in IDEA Part B application. Assurance #11</p>	<p>Category 1. State complaint process allows filing a complaint on violation of any CT law regarding</p>

			Complaint Resolution Process procedures posted on-line and distributed through districts and parent organizations.	special education. IDEA only identifies IDEA violations.
300.154. Methods of ensuring services. If state assigns FAPE to non-educational agencies, state must have interagency agreement or other mechanism to ensure FAPE is provided.	The state statutes assign responsibility for the provision of FAPE to public school districts. CGS Section 10-76d	No provisions in the regulations.	State provides assurance in IDEA Part B application. Assurance #12	Category 2
300.155. State will not withhold funds from a district without first providing the district with reasonable notice and an opportunity for a hearing.	No provisions in state statutes.	No provisions in state regulations.	State provides assurance in IDEA Part B application. Assurance #13	Category 3
300.156. Personnel qualifications. State must have personnel qualifications for all personnel necessary to implement Part B requirements including teacher, related service personnel and paraprofessionals; special education teachers must be highly qualified.	Teacher certification statutes and regulations for certification of staff.	Each district must employ certified and/or licensed personnel and support personnel necessary to implement the special education and related services required in each child's individualized education program. All personnel in supervisory positions in special education and related services shall hold an intermediate administrator's certificate and shall be appropriately certified and/or licensed as specified in these regulations. Personnel hired after the effective date of the regulations for supervisory	State provides assurance in IDEA Part B application. Assurance #14	Category 3

		positions in special education and related services not required by these regulations shall be appropriately certified and/or licensed in special education or pupil personnel services. Section 10-76d-2 of the state regulations.		
300.157. The state has established performance goals and indicators for children with disabilities.	No provisions in state statutes.	No provisions in state regulations.	State provides assurance in IDEA Part B application. Assurance #15 State provides districts with an Annual Performance Report on the district's compliance with performance goals and indicators.	Category 3
300.160. Participation in assessments. Children with disabilities must be included in all state and district-wide assessments with appropriate accommodations and alternate assessments, if necessary, as indicated in the child's IEP.	No provisions in state statutes.	No provisions in state regulations.	State provides assurance in IDEA Part B application. Assurance #16 State IEP document addresses state and district testing and accommodations State Performance Indicator #3 addresses participation and performance on statewide assessments	Category 3
300.162. Supplementation of State, local and other Federal funds. How the state will expend Part B funds.	No provisions in state statutes.	No provisions in state regulations.	State provides assurance in IDEA Part B application. Assurance # 17	Category 3
300.163 through 300.164. State will not reduce the	No provisions in state statutes.	No provisions in state regulations.	State provides assurance in IDEA Part B application.	Category 3

amount of State financial support for special education and related services for children with disabilities below the amount of the preceding year.			Assurance #18	
300.165. Public hearing , with adequate notice of such, required on any state policies and procedures necessary to show compliance with Part B	No provisions in state statutes.	No provisions in state regulations.	State provides assurance in IDEA Part B application. Assurance #19.	Category 3
300.166. Rule of construction. A state may not use funds paid under Part B to satisfy State-law mandated funding obligations to districts, including funding based on student attendance or enrollment, or inflation.	No provisions in state statutes.	No provisions in state regulations.	State provides assurance in IDEA Part B application. Assurance #20.	Category 3
300.167 through 300.169. State Advisory Panel.	State Advisory Panel established in CGS Section 10-76i	No provisions in state regulations.	State provides assurance in IDEA Part B application. Assurance #21.	Category 2. The SAC as constituted by the state has members in excess of those required by the IDEA. This does not have an impact on municipal cost for the provision of special education.
300.170. Suspension and expulsion rates. The state examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities.	No provisions in state statutes.	No provisions in state regulations.	State provides assurance in IDEA Part B application. Assurance # 22. State Performance Indicator #4 addresses suspension and expulsion rates.	Category 3
300.171. Annual description of the use of Part B funds.	No provisions in state statutes.	No provisions in state regulations.	This is included as a necessary submission with	Category 3

			the IDEA Part B annual application.	
300.172. Access to instructional materials and adoption of the state of the NIMAC standards.	No provisions in state statutes.	No provisions in state regulations.	State provides assurance in IDEA Part B application. Assurances #23a and 23b.1. State has adopted the NIMAC standards and provides on-line technical assistance and information for districts.	Category 3
300.173. Over identification and disproportionality. State must have policies and procedures in effect to prevent inappropriate over identification or disproportionate representation by race and ethnicity of children as children with disabilities.	CGS Section 10-76gg requires districts to provide data to state for review and requires the state to take action if over identification or disproportionality is found.	No provisions in state regulations.	State provides assurance in IDEA Part B application. Assurance #24. State Performance Indicators # 9 and 10 addresses over identification and disproportionality.	Category 3
300.174. Prohibition on mandatory medication. The state must prohibit district personnel from requiring parents to obtain prescriptions as identified in the law as a condition for a child to attend school, receive an evaluation or services under Part B.	No child may be required to obtain a prescription for a substance covered by the Controlled Substances Act, 21 USC 801 et seq., as amended from time to time, as a condition of attending school, receiving an evaluation under section 10-76ff or receiving services pursuant to sections 10-76a to 10-76h, inclusive, or the Individuals with Disabilities Education Act, 20 USC 1400 et seq., as amended from time to time. CGS Section 10-76d(a)	No provisions in state regulations.	State provides assurance in IDEA Part B application. Assurance # 25.	Category 3

State Implementation	
CT statutes and regulations require the identification, referral and evaluation of gifted and talented students CGS Sections 10-76a(5) and 10-76d Sections 10-76a-1(4), 10-76d-1(b), 10-76d-6, 10-76d-9 of the state regulations	Category 4
CT statutes and regulations include gifted and talented children as children requiring special education; the state regulations include gifted and talented and pregnancy as disabilities CGS Section 10-76a(5) Sections 10-76a-1(4), 10-76a-2 of the state regulations	Category 4
Prohibition on the use of physical restraint or seclusion for children in the process of being identified as eligible for special education or children already identified as eligible unless an emergency exists, standards for use, training and reporting standards; statutory and regulatory requirements CGS Sections 46a-150 through 46a-154, inclusive Sections 10-76b-5 to 10-76b-10, inclusive of the state regulations	Category 4
Filing for Medicaid Reimbursement allowed, not required CGS Section 10-76(a)(2) through (a)(6), (9) and (10)	Category 4
Immediately upon the formal identification of any child as a child requiring special education and at each planning and placement team meeting for such child, the responsible local or regional board of education shall inform the parent or guardian of such child or surrogate parent or, in the case of a pupil who is an emancipated minor or eighteen years of age or older, the pupil of the laws relating to special education and the rights of such parent, guardian, surrogate parent or pupil under such laws and the regulations adopted by the State Board of Education relating to special education. If such parent, guardian, surrogate parent or pupil does not attend a planning and placement team meeting, the responsible local or regional board of education shall mail such information to such person. CGS Section 10-76d(a)(8)(A)	Category 4
At each initial planning and placement team meeting for a child, the responsible local or regional board of education shall inform the parent, guardian, surrogate parent or pupil of the laws relating to physical restraint and seclusion pursuant to chapter 814e and the rights of such parent, guardian, surrogate parent or pupil under such laws and the regulations adopted by the State Board of Education to adopt regulations relating to physical restraint and seclusion. CGS Section 10-76d(a)(8)(B)	Category 4
Parents to receive notice of referral to special education no later than five school days after the child is referred. Section 10-76d-8 of the state regulations	Category 4
Parent must be provided a copy of the IEP within 5 school days after the PPT meeting to develop, review or revise the IEP. Section 10-76d-13(a)(6) of the state regulations	Category 4
Transportation limited to and from the curb of the child's residence unless parent and district otherwise agree CGS Section 10-76d(e)(1)	Category 4

State agency placement provisions including state agency placement grant CGS Section 10-76d(e)(2)	Category 4
Payment of children residing on state-owned or leased property. CGS Section 10-76d(e)(3)	Category 4
DMHAS to provide educational services for eligible residents 18 to 21 years of age residing in DMHAS facilities CGS Section 10-76d(e)(4)	Category 4
Payment of state agency placement grant by the SDE: treatment of such grant by town treasurer CGS Section 10-76d(e)(5)	Category 4
Placement of children in private facilities out of state: requirements CGS Section 10-76d(f)	Category 4
Annual review and report on the progress of any child placed by school district in private school, agency or institution; Commissioner of Education may request submission of the report. If child needs to be in private facilities for more than 3 years, the SBE must review the progress of the child before allowing reimbursement for the school district of the cost of the placement CGS Section 10-76d(g)(1) and (2)	Category 4
School construction grant for cooperative regional special education facilities CGS Section 10-76e	Category 4
Terms used in state formulas for special education grants CGS Section 10-76f	Category 4
State Aide for Special Education CGS Section 10-76g	Category 4
The district must request a hearing if the parent refuses or revokes consent for the private placement of the child if the placement is offered by the PPT subsequent to the child's initial receipt of special education services. CGS Section 10-76h(a)(2) Section 10-76h-3(c) of the state regulations	Category 4
Both parties to the hearing must participate in a prehearing conference to resolve the issues in dispute, if possible and narrow the scope of the issues. CGS Section 10-76h(c)(2) Section 10-76h-12 of the state regulations	Category 4
Special education at Gilbert School, NFA and Woodstock Academy: special education shall be provided consistent with state statutes and a sending town may be charged for such special education and may receive a state grant for such expenditure. CGS Section 10-76o	Category 4
Special education at the state technical schools: eligible students at the technical schools entitled to receive special education in accordance with the state statutes and IDEA. The PPT may determine the technical school is not appropriate for the child and the child may be returned to the public school district. CGS Section 10-76q	Category 4
On and after July 1, 2006, and for each succeeding fiscal year thereafter, in determining costs eligible for reimbursement	Category 4

<p>pursuant to subdivisions (2) and (3) of subsection (e) of section 10-76d, subdivision (2) of subsection (a) of section 10-76g and subsection (b) of section 10-76g, Medicaid reimbursement received by any local or regional board of education from the Department of Social Services for students of such boards of education shall not be deducted from grants paid in accordance with said sections.</p> <p>CGS Section 10-76hh</p>	
<p>Provision of applied behavioral analysis services for students on the autism spectrum. Certification, licensure requirements.</p> <p>CGS Section 10-76ii</p>	Category 4
<p>School placement of children in certain placements, educational and financial responsibility for children placed out of their homes by state agencies, children residing with relatives or nonrelatives, children who are temporarily homeless, education services for children awaiting disposition of their cases in juvenile detention facilities.</p> <p>CGS Section 10-253 as amended by Section 28 of Public Act 11-51</p>	Category 4
<p>Personnel. Supervisory ratios.</p> <p>Section 10-76d-2 of the state regulations was effectively repealed by Section 10-76dd of the state statutes, therefore, former requirement for supervisory ratios eliminated.</p> <p>Provision for the direct supervision of aides; for consultation time to be scheduled for personnel to consult with each other, other personnel and parents.</p> <p>System of personnel development required.</p>	Category 4
<p>Class size and composition. Number and age range of children requiring special education assigned to a class shall be such that the child's IEP can be met.</p> <p>Section 10-76d-5 of the state regulations</p>	Category 4
<p>Referral. District to accept and process referrals from school personnel, as well as from a child's parents; or from a physician, clinic or social worker, provided parent permits. Standard referral form to be available. Before referral to PPT, alternate procedures in regular education shall be explored and where appropriate, implemented. Prompt referral to PPT for any child who has been suspended repeatedly, or whose behavior, attendance or progress in school is unsatisfactory or at a marginal level of acceptance.</p> <p>Section 10-76d-7 of the state regulations</p>	Category 4
<p>At variance with the reevaluation consent requirements. Under the state regulations, the district would not be required to conduct the reevaluation if the parent failed to respond to the request for reevaluation; IDEA allows the district to conduct the reevaluation if the parent fails to respond if 2 conditions are met: the district has made reasonable efforts to secure consent and the parent fails to respond. The practice of the SDE has been to defer to the IDEA regulation as it provides more protection for children.</p> <p>Section 10-76d-8 of the state regulations</p>	Category 3
<p>Where a child is dominant in a language other than English, the evaluation shall include systematic teacher observations of the specific area of concern. Detailed information about the child's performance at home and in the community and any prescriptive or diagnostic teaching which has been taken is to be included.</p> <p>Section 10-76d-9 of the state regulations</p>	Category 1. IDEA regulation Section 300.324(a)(2)(ii) requires the IEP team to consider the needs of a child with

	<p>limited English proficiency as to how those language needs relate to the child's IEP.</p>
<p>Planning and placement team. Defined as a group of certified or licensed professionals who represent each of the teaching, administrative and pupil personnel staffs and who participate equally in the decision making process to determine the specific educational needs of the child and develop an IEP. Persons knowledgeable in the areas necessary to determine and review the appropriate educational programs for an exceptional.</p> <p>Section 10-76a-1(15) of the state regulations</p> <p>The state requires a full PPT for the following meetings: conducting an evaluation, determining the child's eligibility for special education, to develop the IEP, to review or revise the IEP and conducting a reevaluation.</p> <p>Section 10-76d-10 of the state regulations</p>	<p>Category 2. IDEA IEP team consists of the parents of the child, not less than one regular education teacher of the child (if the child is or may be participating in the regular education environment), not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, in knowledgeable about the general education curriculum and the availability of resources of the district; an individual who can interpret the instructional implications of evaluation results, who may be a member of the team as described above (but not the parent), at the discretion of the parent of district, other individuals who have knowledge or special expertise regarding</p>

the child, including related service personnel, and whenever appropriate, the child. When the team is discussing transition, the child must be invited if the purpose of the meeting is to consider postsecondary goals and the transition service needs of the child. IDEA regulation Section 300.321

The state practice is to require districts to meet both the PPT and IEP team requirements.

IDEA does not require a full IEP team for every meeting held on a child requiring special education. IEP team required to review, revise, develop the IEP (provisions do allow excuse of certain members of the IEP team), designing the initial evaluation and the reevaluation and conducting the manifestation determination required by Section 300.530(e) for discipline concerns, determine services for a child removed from school where the removal constitutes a change in placement, Section

	300.530(d)(5). Placement decision by group of persons knowledgeable about the child, including the parents (see Section 300.116).
<p>Timeline consideration. If child enrolls after last day of the previous school year, the process shall be completed by October 1st of the school year.</p> <p>Requires the annual review of a child's IEP and upon the request of the parent or personnel working with the child, provided the child's educational performance indicates the needs for the review.</p>	<p>Category 4</p> <p>Category 1. IEP team reviews the child's IEP periodically, but not less than annually. No requirement that IEP be reviewed upon request of parent or personnel working with the child.</p>
<p>Meetings. Meetings for children in out of district or private placements must include representative of the out of district or private placement. Section 10-76d-12 of the state regulations</p>	<p>Category 1. IDEA regulation at 300.325 requires participation of representative from private school or facility, not out of district placement representative.</p>
<p>Timelines. Referral timeline: If a referral is made during the academic year, the IEP shall be implemented within 45 school days of referral or notice, exclusive of the time necessary to secure parental consent. If the IEP calls for an out of district or private placement, the IEP shall be implemented within 60 calendar days of referral or notice, exclusive of the time necessary to obtain parental consent. If the child cannot be placed within this time frame due to the difficulty of placement, the district is to provide written documentation to the SBE of its efforts to place the child in a timely fashion. Parental consent shall be given within 10 school days of the date of notice or where appropriate, within 10 school days of the date of the PPT meeting in which the parents participated. A full copy of the IEP shall be given to the parents within five school days after the PPT meeting to develop, review or revise the IEP.</p>	<p>Category 4. IDEA timelines for evaluation, implementation of the IEP are as follows:</p> <p>The initial evaluation must be conducted within 60 calendar days of receiving parental consent for the evaluation or in accordance with the state timeline. The</p>

<p>Where the referral is made in between school years, the effective date of the referral may be deemed to be the first day of the next school year.</p> <p>IDEA uses calendar days, not school days. There is no IDEA timeline for referral to implementation of an IEP which encompasses the completion of the evaluation, the determination of eligibility, the writing and implementing of the initial IEP.</p> <p>Section 10-76d-13 of the state regulations</p>	<p>exceptions to the timeframe are: if the parent repeatedly fails or refuses to produce the child for the evaluation or the child enrolls in school in another school district after the 60 calendar day timeframe has begun and prior to a determination the child is eligible. This latter exception applies only if the subsequent school district is making sufficient progress to ensure a prompt completion of the evaluation and the parent and such district agree to a specific time frame when the evaluation is completed. IDEA regulation Section 300.301(c) and (d)</p> <p>A meeting to develop an initial IEP for a child must be conducted within 30 calendar days of a determination that the child is eligible for services. As soon as possible following the development of the IEP, special education and related services must be made available to the child in accordance with the IEP. IDEA regulation Section 300.323(c)</p>
<p>Trial placement for diagnostic purposes. The state regulations allows the use of a trial placement as an evaluation tool to assess</p>	<p>Category 4. IDEA does not</p>

<p>the needs of a child for whom an IEP may be needed, but for whom the evaluation study is either inconclusive or the data insufficient to determine the child's IEP.</p>	<p>contain explicit requirements for a trial placement for diagnostic purposes. IDEA does contain language in the evaluation section, Section 300.304 which states that a variety of assessment tools and strategies should be utilized to gather relevant information on a child to assist in determining whether a child is a child with a disability and what the IEP should contain to address the child's needs.</p>
<p>Transportation State regulations have standards for travel time, in-service training for operators of vehicles, vehicles, use of transportation aids and conditions if parents provide the transportation. Section 10-76d-19</p>	<p>Category 4</p>

SURVEY

Special Act 11-9, An Act Concerning a Review of the Cost to Municipalities of State Mandated Special Education Requirements

Attached is the survey designed to examine the cost to municipalities of complying with the provisions of the state special education statutes and regulations which are in excess of those required for the state to remain eligible for federal financial assistance under the Individuals with Disabilities Education Act (IDEA). This analysis is required pursuant to the provisions of Special Act 11-9, An Act Concerning a Review of the Cost to Municipalities of State Mandated Special Education Requirements.

In order to conduct the comprehensive review required by the Act, the State Department of Education defined the minimum requirements of federal law as those requirements of the IDEA which the state must be in compliance with in order for the state to remain eligible for federal financial assistance under the IDEA. The SDE reviewed the following to determine the minimum requirements of the IDEA:

- IDEA regulation Section 300.100 requires the state to submit a plan to the Secretary of Education that shows the state meets the conditions set forth in Sections 300.101 through 300.176 of the IDEA regulations.
- Assurances provided by the State in its annual IDEA Part B application to provide evidence that the state has policies and procedures in place which meet the conditions set forth in Sections 300.100 to 300.176 of the IDEA regulations.
- IDEA regulation Section 300.157 requires the state meet Performance Goals and Indicators in order for the state to remain eligible for federal financial assistance.

A copy of this analysis is available upon request by contacting, Theresa.defrancis@ct.gov. As a result of the analysis, the SDE organized Federal and state requirements as follows:

1. Category 1: State mandates in excess of those required for the state to remain eligible for federal financial assistance under the IDEA
2. Category 2: State mandates where the IDEA allows the state to elect how the state will implement an IDEA requirement.
3. Category 3: State mandates in alignment with IDEA.
4. Category 4: State mandates not addressed in the IDEA. These state mandates address state implementation issues to ensure children with disabilities receive services to which they are entitled.

The cost analysis covers Category 1, Category 2 and Category 4. The survey asks questions about each item identified and asks the school district to determine its cost for implementing the requirement. Some questions ask for the district's direct costs; other questions ask districts to determine if the requirement were changed, would the fiscal impact to the district increase or decrease or would there be minimal fiscal impact. There are several areas where costs to districts are assumed; the district is asked if they agree or disagree with the statement of costs provided.

For purposes of answering the questions on this survey, direct cost means the cost of running the program or providing services to eligible students. It includes personnel, salaries, related services, supplies and equipment. Direct cost does not include administrative costs unless personnel are specifically designated for the program or services such as a preschool program administrator or related services personnel dedicated to a preschool program. Do not include any costs shared with other programs the district offers.

The purpose of the survey is to determine costs. It is critical to remember the state is still required to remain in compliance with IDEA. Therefore, this survey is intended to examine costs associated with state mandates that exceed the minimum requirements of federal law.

12/28/2011

Category 1 - State mandates in excess of those required for the state to remain eligible for federal financial assistance under the IDEA

Question 1: The IEP document. Writing short term instructional objectives for all children, identifying type of transportation to be provided to a child, listing IEP implementers on the IEP and in the case of a residential placement, indicating whether the placement is being recommended because of the need for services other than educational

If the state eliminated the requirement of the PPT writing short term instructional objectives for all children, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

If the state eliminated the requirement that the type of transportation provided to the child be identified in the child's IEP, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

If the state eliminated the requirement that the IEP indicates whether a residential placement is recommended for other than educational reasons, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

Question 2: Provision of a free copy of the child's records to the parents

For the 09-10 school year, how many times did the district provide parents with a free copy of educational records (include multiple requests from same parents)?

If the state eliminated the requirement that a free copy of the child's educational records be provided to the parents, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

Question 3: Parental consent required for private school placement and district required to file for due process if parent refuses, revokes consent for private school placement

For the 09-10 school year, did the district initiate due process (request mediation or file for a hearing) to override the refusal or revocation of parental consent for private school placement?

Yes No

If the state eliminated the requirement that districts must file for due process if parents refuse or revoke consent for a private school placement, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

Question 4: Retention of surrogate parent if a child is exited from special education and placed on a 504 plan

For the 09-10 school year, how many children had a surrogate parent?

Of those children, how many were exited from special education and placed on a 504 plan and retained the surrogate parent?

12/28/2011

If the state eliminated the requirement that surrogate parents continued for students exited from special education and placed on 504 plans, would it result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$

Question 5: Complaint investigations on violations of state statutes or regulations

For the 09-10 school year, how many special education complaints were filed against the district alleging violations of state law or regulations?

If the state eliminated the requirement that the state complaint process allows for investigation of allegations of violations of state statutes or regulations, would it result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$

Question 6: Evaluation of children with limited English proficiency

For purposes of answering this question, direct cost means the cost of running the program or providing services to eligible students. It includes personnel, salaries, related services, supplies and equipment. Direct cost does not include administrative costs unless personnel are specifically designated for the program or services such as a preschool program administrator or related services personnel dedicated to a preschool program. Do not include any costs shared with other programs the district offers

For the 09-10 school year, how many children with limited English proficiency were evaluated to determine eligibility for special education?

If the state eliminated the requirement that the evaluation include information about how the child performs at home or in the community, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$

Question 7: Review of the child's program and placement if the child's parent or staff requests it and the child's educational program indicates the need for a review

For the 09-10 school year, how many times was the district requested to convene a PPT meeting to review the child's program or placement in addition to the annual review?

If the state eliminated the requirement to hold PPT meetings if the child's parent or staff requests it and the child's educational program indicates the need for a review, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$

Question 8: Requiring the attendance of out of district placement personnel at PPT meetings

For the 09-10 school year, how many PPT meetings were held to review, revise or develop an IEP for a child in an out of district placement which was not a private school or facility?

Was the cost to the district to hold the PPT with the out of district personnel measurable?

Yes No

If the state were to eliminate the requirement that out of district personnel attend PPT meetings, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$

12/28/2011

Category 2 - State mandates where the IDEA allows the state to elect how the state will implement an IDEA requirement

Question 1: Age range of children for the provision of services

For purposes of answering this question, direct cost means the cost of running the program or providing services to eligible students. It includes personnel, salaries, related services, supplies and equipment. Direct cost does not include administrative costs unless personnel are specifically designated for the program or services such as a preschool program administrator or related services personnel dedicated to a preschool program. Do not include any costs shared with other programs the district offers

For the 09-10 school year, how many children ages 3 to 5, inclusive were found eligible for special education and provided with a preschool program or services?

\$

What was the direct cost to provide the preschool programs and services?

\$

For the 09-10 school year, how many eligible children ages 18 to 21, inclusive, were provided with services?

\$

For the 09-10 school year, what was the direct cost to provide services to the 18 to 21 year olds?

\$

How many students turned 21 after July 1, 2009 and were subsequently provided services through the end of the 09-10 school year?

\$

For the 09-10 school year, what was the direct cost to provide services to these children?

\$

If the state were to eliminate the provision of services to 3 to 5 year olds and 18-21 year olds, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$

Question 2: (for USD #1 only). Provision of FAPE for children incarcerated in adult correctional facility

(Please take into account personnel used to evaluate and identify eligible children and personnel writing and implementing IEPs)

If the state were to eliminate the provision of special education services to children who were not identified as being eligible for special education prior to incarceration in an adult correctional facility, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$

Question 3: Provision of FAPE by non-educational agencies

For purposes of answering this question, direct cost means the cost of running the program or providing services to eligible students. It includes personnel, salaries, related services, supplies and equipment. Direct cost does not include administrative costs unless personnel are specifically designated for the program or services such as a preschool program administrator or related services personnel dedicated to a preschool program. Do not include any costs shared with other programs the district offers

For the 09-10 school year, please identify the direct cost to the school district of the following services:

For 3-5 year olds, home services, parent training, mental health component of day and residential treatment services, residential component of residential placements

\$

For 6-17 year olds, mental health component of day and residential treatment services, residential component of residential placements

\$

For 18-21 year olds, mental health component of day and residential treatment services, residential component of residential placements, post high school employment services

\$

12/28/2011

If the state were to assign FAPE responsibilities to non-educational agencies, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

Question 4: Use of developmental delay as a category of disability, age range

For the 09-10 school year, how many children identified as developmentally delayed were exited from special education at age 6?

If the developmentally delayed category was available until age 9, how many children would have remained eligible for special education?

If these children would have remained eligible for special education under the developmental delay category, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

Question 5: Hearing system

States may choose a single-tiered or two-tiered hearing system. CT has a single-tiered hearing system where the state manages the special education due process hearing system

If districts had to conduct special education due process hearings at the local level (managing an administrative hearing system includes the hiring of hearing officers and providing transcripts to parents) would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

Question 6: IDEA requirements for the identification of a specific learning disability

States must not require the use of a discrepancy between intellectual ability and achievement must permit the use of a process based on the child's response to scientific, research-based intervention and may permit the use of other alternative research-based procedures. Districts must use the criteria adopted by the state. In order to identify a child as child with a specific learning disability, certain criteria must be met including ruling out other disabilities, cultural factors, environmental or economic disadvantage or limited English proficiency, or, that the underachievement of the child is not due to a lack of appropriate instruction in reading or math

If the scientific, research-based interventions described in the SDE document Using Scientific Research-Based Interventions: Improving Education for all Students, Connecticut's Framework for RTI, dated August 2008, were eliminated and an alternative research-based procedure was allowed, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

Question 7: IEP/PPT membership

The IEP team under the IDEA consists of the parents, the regular education teacher of the child (where appropriate), the special education teacher of the child, or where appropriate, a special education provider of the child, a representative of the district who can provide or supervise the provision of specially designed instruction, is knowledgeable about the general education curriculum and the availability of resources, and individual who can interpret the instructional implications of evaluations who may be one of the previously named school individuals, at the discretion of the parents or school district, other individuals who have knowledge or special expertise regarding the child. State regulations define the PPT as consisting of an administrator, a teacher and a pupil personnel representative for every PPT meeting. State practice requires districts to meet both IEP team and PPT team member requirements. IEP team is required for any meeting to review, revise or develop a child's IEP, designing the initial evaluation and reevaluation and conducting the manifestation determination with regard to discipline

If the state eliminated the requirement that related services personnel attend every PPT meeting, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

12/28/2011

Would there be a reduction in time commitments by related services personnel to attend PPT meetings and a subsequent redeployment of staff?

Yes No

Category 4 - State mandates not addressed in the IDEA. These state mandates address state implementation issues to ensure children with disabilities receive services to which they are entitled

Question 1: Timeline for scheduling mediation

If the state were to eliminate the timeline for scheduling mediation, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

Question 2: Advisory opinion process available prior to convening a special education hearing

If the state were to eliminate the advisory opinion process, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

Question 3: Motion practice for due process hearings

If the state were to eliminate the motion practice for due process hearings, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

Question 4: Prescriptive requirements for requesting postponements of scheduled due process events (such as hearing dates, due dates for briefs, etc.)

If the state were to eliminate the prescriptive requirements for requesting postponements of due process events (postponements would be requested according to IDEA standards which allows the hearing officer to grant postponements at the request of either party consistent with considerations of fairness and the need to move the case forward), would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

Question 5: Out of state attorneys sponsored by attorneys licensed to practice in

If the state were to eliminate the ability of out of state attorneys to participate in advisory opinions and hearings, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

Question 6: Requirements for the submission of exhibits

If the state were to eliminate the specific requirements for the form the exhibits must take, understanding the exhibits must be submitted in a form that allows the parties to identify each exhibit, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

Question 7: Burden of proof

IDEA is silent on which party bears the burden of proof in a due process hearing. The state regulations assign the burden of proof to the school district. This means if the evidence presented by the parties in a hearing is equal and the hearing officer cannot weigh the evidence in favor of either party, the parent would prevail in the case

12/28/2011

If the state regulations were silent on the burden of proof, which would mean the party that filed for the hearing would have the burden of proof if the evidence was equal, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

How many requests for mediations or hearings did the district receive during the 09-10 school year?

How many mediations did the district participate in during the 09-10 school year?

How many hearing requests were withdrawn because the parties had settled?

How many full hearings did the district participate in during the 09-10 school year?

How much time did the district expend preparing for due process hearings during the 09-10 school year?

hr _____

How much time did the actual hearing take?

hr _____

If the burden of proof were on the party requesting the hearing, would the district have made a different decision about negotiating settlements in cases filed for either mediation or hearing during the 09-10 school year?

Yes No

Question 8: Hearing officers may include comments on the conduct of the hearing in the final decision and order

If the state were to eliminate allowing the hearing officer to comment on the conduct of the hearings, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

Question 9: The hearing officer has the authority to dismiss cases upon the motion of either party for seven specific situations including failure of a party to prosecute the case and failure of a party to appear at a properly noticed hearing

If the state were to eliminate allowing the hearing officer to comment on the conduct of the hearings, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

Question 10: The State Advisory Council includes members in excess of what is required by the IDEA. It is assumed that reducing the membership on the State Advisory Council would have no measurable fiscal impact on school districts

Agree Disagree

Question 11: Identification and evaluation of gifted and talented children and gifted and talented and pregnancy as categories of disability

For purposes of answering this question, direct cost means the cost of running the program or providing services to eligible students. It includes personnel, salaries, related services, supplies and equipment. Direct cost does not include administrative costs unless personnel are specifically designated for the program or services such as a preschool program administrator or related services personnel dedicated to a preschool program. Do not include any costs shared with other programs the district offers

How many children did the district identify during the 09-10 school year as gifted or talented?

Pregnant?

What is the direct cost to the district for identifying gifted and talented children?

\$ []

For identifying pregnant children?

\$ []

For providing programs and services during the 09-10 school year for gifted and talented children?

\$ []

For pregnant children?

\$ []

If the state were to eliminate gifted and talented and pregnancy as categories of disability under which children may be eligible for special education services, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ []

Question 12: The emergency use of physical restraint or seclusion with children with disabilities

What did it cost the district to train personnel on the proper usage of emergency physical restraint and seclusion, including any training that would prevent the need to use emergency restraint or seclusion (this does not need to be restricted to the 09-10 school year)?

\$ []

What did it cost the district to properly equip a room used for seclusion purposes?

\$ []

For the 09-10 school year, what did it cost the district to file the required reports with the SDE?

\$ []

What did it cost the district to notify parents as required: upon identification of the child as eligible for special education, notification of the laws pertaining to the use of restraint or seclusion and upon each instance of the emergency use of restraint or seclusion?

\$ []

If the state were to eliminate the requirements governing the emergency use of physical restraint or seclusion with children with disabilities, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ []

Question 13: Filing for Medicaid reimbursement allowed, not required. Each district determines whether it is appropriate to file for the Medicaid reimbursement and by so doing, the district assumes responsibility for its own costs

No Response Required

Question 14: Notifying parents about the state laws regarding special education

Districts must provide procedural safeguards notice to parents. In addition, districts must notify parents about the state laws regarding special education

If the state were to eliminate the requirement that parents be notified about the state laws regarding special education, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ []

Question 15: Written notice provided to parents when a referral to special education is made

Districts must provide a notice to parents when a referral to special education is made

If the state were to eliminate the notice of referral, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ []

12/28/2011

Question 16: IEP to be provided to the parent at no cost within 5 school days of the meeting where the IEP is written or revised

If the state were to eliminate the timeline required for providing a copy of the IEP to the parents, would this result in an increase, decrease or no measurable fiscal impact for the district?

- Increase Decrease No measurable fiscal impact

\$ _____

Question 17: Requirements for the provision of transportation services including limiting transportation to and from the curb of the child's residence unless the parent and district otherwise agree, limiting travel time to one hour each way, requiring the training of operators of vehicles and the use of transportation aides where appropriate

If the state were to eliminate these requirements, would this result in an increase, decrease or no measurable fiscal impact for the district?

- Increase Decrease No measurable fiscal impact

\$ _____

Question 18: State agency placement of children eligible for special education and how the costs associated with such placements are apportioned between the school district and the placing agency, state agency placement grant

For purposes of answering this question, direct cost means the cost of running the program or providing services to eligible students. It includes personnel, salaries, related services, supplies and equipment. Direct cost does not include administrative costs unless personnel are specifically designated for the program or services such as a preschool program administrator or related services personnel dedicated to a preschool program. Do not include any costs shared with other programs the district offers

For the 09-10 school year, what was the direct cost to the district for state agency placements of children eligible for special education for whom the district was required to pay tuition to another district or to a facility? Do not deduct the state agency placement grant from the district expenditures

\$ _____

If the state were to eliminate the state agency placement grant, would this result in an increase, decrease or no measurable fiscal impact for the district?

- Increase Decrease No measurable fiscal impact

\$ _____

Question 19: State grant for the education of children on state owned or leased property

If the state were to eliminate this grant, would this result in an increase, decrease or no measurable fiscal impact for the district?

- Increase Decrease No measurable fiscal impact

\$ _____

Question 20: Services to be provided to 18 to 21 year olds living in department of mental health and addiction services (DMHAS) facilities and who are eligible for regular and special education. Services are provided on site by DMHAS. It is assumed there is no district cost associated with the provision of these services

- Agree Disagree

Question 21: Treatment of the excess cost grant received by the districts. This is an accounting procedure which describes how the grant is to be treated by the town treasurer. It is assumed the cost to the district for providing services to eligible children would remain the same regardless of how the grant is treated by the town treasurer

- Agree Disagree

Question 22: Placement of children in out of state facilities requires the approval of the Commissioner of Education

If the state eliminated the approval of the Commissioner of Education for placement of children in out of state facilities, would this result in an increase, decrease or no measurable fiscal impact for the district?

- Increase Decrease No measurable fiscal impact

\$ _____

12/28/2011

Question 23: Annual review and report on the progress of children placed in private schools, agencies or institutions and that such report be submitted to the Commissioner if requested. It is assumed there would be no measurable fiscal impact if this procedure was eliminated as districts are required to conduct annual reviews

Agree Disagree

Question 24: The state statutes provide for a school construction grant for cooperative regional special education facilities

No Response Required

Question 25: Definition of terms used in calculating state grants for special education

No Response Required

Question 26: State grants for special education expenditures

If the state eliminated the state grant for special education, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

Question 27: Parties in due process hearings must participate in a telephonic prehearing conference

How many prehearing conferences did the district participate in during the 09-10 school year?

Was the cost of participating in such conferences measurable?

Yes No

If the state eliminated the requirement for telephonic prehearing conferences, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

Question 28: Use of incorporated or endowed high schools to provide services for towns which do not maintain a high school. This allows towns to pay tuition for the provision of a high school program rather than having to fund and maintain a district high school

If the state eliminated the use of incorporated or endowed high schools for towns which did not maintain high schools, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

Question 29: Provision of applied behavior analysis services pursuant to an IEP requires use of persons licensed by the department of public health or certified by the state department of education whose licensure or certification qualifies them to provide such services, or BCBA certified personnel, to provide applied behavior analysis services if a child's IEP calls for such

Has this requirement resulted in a measurable increase in costs for the district and if Yes, for the 09-10 school year, what has the district expended for the provision of applied behavior analysis services by persons licensed by the department of public health, certified by the department of education or BCBA certified?

Yes No \$ _____

For the 09-10 school year, how many children are provided services by BCBA certified personnel?

Assessment _____ Direct services _____

What is the age range for such services?

Assessment 3 to 5 _____ Assessment 6 to 21 _____

Direct services 3 to 5 _____ Direct services 6 to 21 _____

12/28/2011

If the state were to eliminate the requirement that the district use persons licensed by the department of public health or certified by the state department of education whose licensure or certification qualifies them to provide applied behavior analysis services or BCBA certified personnel, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

Question 30: Provision of educational services to children considered homeless under the McKinney-Vento Act

For the 09-10 school year, the district was responsible for educating how many children considered homeless?

If the state eliminated the state requirements for the provision of educational services to children considered homeless under McKinney-Vento (districts would be required to provide services in accordance with McKinney-Vento), would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

Question 31: Reimbursement for each district to employ supervisory personnel within certain parameters

If the state eliminated the state reimbursement for special education supervisory personnel, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

Question 32: Class size and composition dependent on the individual needs of children with disabilities. It is assumed there would be no measurable fiscal impact if this requirement were eliminated as each child would continue to be provided with services, including placement, as necessitated by the child's IEP

Agree Disagree

Question 33: Use of alternate procedures in regular education before referral to the PPT. Prompt referral to the PPT of any child who has been suspended repeatedly, or whose behavior, attendance or progress in school is unsatisfactory or at a marginal level of acceptance

For the 09-10 school year, how many children were referred to the PPT because the child was suspended repeatedly, or whose behavior, attendance or progress in school was unsatisfactory or at a marginal level of acceptance?

If the state were to eliminate the requirement that prompt referral to the PPT be made for any child who was suspended repeatedly or whose behavior, attendance or progress in school was unsatisfactory or at a marginal level of acceptance, would this result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

Question 34: State timeline of 45 school days for the completion of a referral to special education. The timeline covers the evaluation, determination of eligibility, the writing and implementing of the IEP

For this question, please look at referrals made during the 09-10 school year and determine each timeline based on the IDEA calendar day timeline

If the state timeline were eliminated and the IDEA timeline implemented, would it result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

\$ _____

Question 35: Use of a trial placement as an evaluation

If trial placement for evaluation were eliminated, would it result in an increase, decrease or no measurable fiscal impact for the district?

Increase Decrease No measurable fiscal impact

12/28/2011

\$

Completed by LEA Representative:

Contact Person Name: Title:

Telephone Number: E-Mail Address:

This questionnaire is not complete until certified below.

Certification

Checking this box certifies that I have to the best of my knowledge, answered the above questions accurately and completely, and the evidence/ documentation is available to support this information.

Superintendent's Signoff Code: Date Certified:

12/28/2011

Series: 2005-2006
Circular Letter: C-9

TO: Superintendents of Schools
Directors of Special Education
Local Boards of Education

FROM: Dr. Betty J. Sternberg
Commissioner of Education

DATE: February 22, 2006

SUBJECT: Supreme Court Decision, *Schaffer v. West*,
546 U.S. _____, No. 04-698 (US 2005)

On November 14, 2005, the United States Supreme Court issued a decision in the above referenced case in which the court addressed the issue of the burden of proof in cases brought under the due process procedures of the Individuals with Disabilities Education Act (IDEA). In the decision, the Court determined by a 6-2 vote (Justice Roberts recused himself from deliberations as his former law firm had represented the school district) that the IDEA was silent on the issue of which party in a due process hearing had the burden of proof in the event that the evidence presented by both parties did not allow the hearing officer to determine which party prevailed on the evidence. As stated by the Court, the burden of proof determines "which party loses if the evidence is closely balanced." Because the IDEA is silent, the justices determined that a "default" rule should apply, meaning that in the event the law is silent, one defers to common practice in which the burden of proof is on the party who files for the hearing. The Court declined to find that any public policy issues should impact their decision, such as the school district being in a better position to argue the appropriateness of the IEP offered. The Court also declined to answer the question of whether the IDEA allowed the states to establish their own rules regarding the burden of proof as that question was not presented to the Justices.

As you may be aware, Connecticut has a burden of proof standard in the state regulations at Section 10-76d-14(a): "The party who filed for due process has the burden of going forward with the evidence. In all cases, however, the public agency has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency. This burden shall be met by a preponderance of the evidence, except for hearings conducted pursuant to 34 CFR Section 300.521."

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February 22, 2006

I am not seeking to revise the state regulation to conform to the ruling in the *Schaffer* case. As the IDEA leaves to the states the management of the hearing system and the law itself is silent on the burden of proof, the standard in Connecticut articulates a valid state policy that school districts are in a better position to defend the appropriateness of an IEP. Districts are in control of following the procedural requirements of the IDEA and of planning and offering an IEP which provides a child with an opportunity to derive meaningful educational benefit, the two criteria courts look at to determine whether an IEP is appropriate.

It would be appropriate for parties seeking to change the state standard to address their concerns to the General Assembly. The legislative process lends itself to a more thorough review of the issues involved in adopting the *Schaffer* ruling and has the benefit of being able to attract widespread public input into this decision.

If you have any questions, please contact Attorney Theresa C. DeFrancis at (860) 713-6933.

BJJ:tcd