Analysis of Comments to the Proposed Special Education Regulations
September, 2011

Comment	CSDE Response and Discussion
Multiple commenters objected to the process utilized by the Department to offer amendments to the state special education regulations. The comments are summarized as follows: • The proposed regulations suggest massive changes to the special education regulations stripping away Connecticut specific guidance, procedures and safeguards and reduce Connecticut to the minimum federal standards. • Parent input in the proposed revisions is missing and leaders of advocacy organizations are not aware of the proposed changes. There are no background findings that legitimate the proposed revisions. The hearings were hidden from parents and hearings held in the evenings keep parents from participating. The proposed changes favor districts and "confer disproportionate benefit upon school administrators and their two law firms at the expense of a greater abuse of children already suffering from Connecticut's documented abuse and discrimination against children with special needs." The commenter calls for a federal investigation perhaps including potential criminal activities and requests such. • The proposals should have hearings with the General Assembly as the proposed revisions to the regulations repeal years of legislative work. The Department has overstepped its authority to adopt regulations with these proposed revisions. • The public hearings were scheduled for late August and September and were held during the day which did not allow participation by parents.	***Discussion:*** • Comments addressing the difference between what the Individuals with Disabilities Improvement Act (IDEA) requires and how Connecticut has addressed those requirements demonstrates an urgent need for the Department to explain in greater detail the intersection between the requirements of the IDEA and the state statutory and regulatory requirements: where IDEA requires the state to adopt a state practice or procedure and where the state has done so; state statutes that have been repealed or revised which require a corresponding change to the state regulations; and, provisions in the regulations which are state practices not covered by IDEA but are necessary for the state administration of the provision of special education and related services to children with disabilities. • The regulations have been under consideration for revision since 2007. Seven public hearings were held during the course of 2007 to solicit input for all stakeholder groups. After the public hearings and review of the comments, the Bureau stopped the regulation process until March of 2010. The proposed revisions offered to the Board in 2010 responded to **comments** made in 2007. • The Department has the authority and responsibility to hold public hearings when the Department proposes to change its administrative regulations. The Department has proposed revisions to the regulations consistent with its rule-making authority. • Four public hearings were held on the proposed revisions. Hearing were held during the day and evening to allow for greater participation.

Section 1: Section 10-76a-1: Definitions	
Sec. 10-76a-1(1) "At no cost:" Several commenters recommended the definition "at no cost" remain in the regulations.	***Discussion:*** Section 10-76b-4 requires school districts to provide services consistent with IDEA. IDEA includes a definition of "at no cost." The state assures the Office of Special Education Programs (OSEP) that the state and all districts follow the requirements of IDEA through the state application for IDEA Part B funds. This includes providing services at no cost to parents. ***Change: No change.***
Sec. 10-76a-1(2) "Board of Education or board:" One commenter recommended removing the regional educational service centers (RESC) from the definition of board of education. Or, include the RESCs in Sec. 10-76h-1(j) as a party who may request a due process.	***Discussion***: A RESC is a service provider, not primarily responsible for the provision of special education. A RESC is not a board of education. ***Change: The RESC reference will be removed from the definition of board of education. A technical correction has been made to identify the technical schools as the Connecticut Technical Highs Schools.***
Sec. 10-76a-1 (3) "Child:" Several commenters noted there appears to be an inconsistency between the definition of child (any person under 21 years of age) and continuing a child's education until the end of the school year the child turns 21. One commenter noted defining a child as a person under 21 is problematic with age of majority being 21. One commenter recommended the regulations define "child with a disability" and then provide a new definition of "child requiring special education."	***Discussion:*** The state statute, Section 10-76a-(2) defines child as any person under 21 years of age. The regulation must be consistent with the statute. The proposed revision defines "child with a disability." ***Change: No change.***
Sec. 10-76a-1(4) "Child requiring special education:" One commenter stated the age requirement limits eligibility for special education to children age three, four or five, or children who have attained the age that the town is required to provide services. The commenter recommended the language be amended to read that children aged three, four or five, as well as any other children otherwise entitled to services from a town are covered.	***Discussion:*** The state statutes require school districts to provide educational services to all children age 5 to 21 who are not graduates of a high school or technical school. The proposed revision incorporates the definition found in the current regulations of "preschool children requiring special education" into the definition of "child requiring special education." The proposed revision maintains the current provision of services to all eligible children. ***Change: No change.***

Sec. 10-76a-1(5) "Days:" Multiple commenters recommended "days" remain defined as school days rather than calendar days. Several commenters agreed with the change from school to calendar days.	***Discussion:*** The term days will be defined as school days. ***Change: The term "days" will remain defined as school days, except where otherwise noted.***
Sec. 10-76a-1(6) "Dominant language"	***Discussion:*** No comments received. ***Change: No change.***
Sec. 10-76a-1(7) "Evaluation:" One commenter stated incorporating the IDEA language would appear to allow only evaluations conducted in accordance with IDEA procedures to be considered by the planning and placement team (PPT). Parents and districts may utilize nonschool affiliated evaluators who may not follow IDEA evaluation requirements; the proposed revision would preclude this. One commenter stated the proposed revision should include the language from IDEA that the evaluation should determine whether child is a child with a disability and the <u>educational needs</u> of the child.	***Discussion:*** The IDEA standards incorporated by reference direct how school districts must evaluate children. The IDEA provisions require the district to consider any evaluation brought to it by the parent with no limitation. The proposed revision includes language regarding using the evaluation to determine the nature and extent of the special education and related service needs of an eligible child. ***Change: No change.***
Sec. 10-76a-1(8) "Exceptional child"	***Discussion:*** No Comments received ***Change: No change.***
Sec. 10-76a-1(9) "Independent evaluation:" Several commenters stated the current definition of "independent evaluation" is more restrictive than the IDEA definition which requires the independent evaluation be conducted by a qualified examiner and may restrict a parent's right to an independent evaluation. One commenter recommended that if necessary, a hearing officer should determine whether or not the independent evaluator was qualified to provide the evaluation. One commenter stated the independent educational evaluation (IEE) should be conducted by trained and knowledgeable personnel; one commenter indicated the IEE should be performed by certified or licensed professional examiners and recommended the definition should include language that requires the evaluator to have expertise in the area of the evaluation along with possession of	***Discussion:*** State policy and practice has defined a "qualified" examiner as someone who is certified or licensed to perform the evaluation being requested. The parental right to an independent evaluation is not restricted by utilizing this definition. ***Change: No change.***

documented experience. For some independent evaluators, certification or licensure may not be in the area of expertise required for the evaluation.	
10-76a-1(10) "Individualized Education Program (IEP):" One commenter stated the proposed revision is confusing and potentially misleading as it does not describe the IEP as a comprehensive plan nor is there a requirement that the IEP document itself must conform to the IDEA. The commenter went on to recommend the definition should include a cross reference to section 10-76d-11 as the state has requirements in addition to IDEA. Additionally, the commenter indicated the use of the term "individualized education program team" was confusing as the state continues to use planning and placement team.	***Discussion***: The proposed revision to the definition incorporates the IDEA language; the reference to the "IEP being in accordance with the IDEA" is not a reference to the document, but to the process of reviewing, revising or developing the IEP. The commenter is correct that a reference to section 10-76d-11 of the regulations should be included as the state does have IEP requirements that are in addition to IDEA. The commenter is further correct about the reference to the IEP team; this is a technical error in the draft as the proposed revisions do not utilize the language IEP team, but retain the PPT language. ***Change: A reference to section 10-76d-11 will be included in the definition of IEP; the reference to the IEP team will be removed.***
Sec. 10-76a-1(11) "LRE:" One commenter stated the definition of least restrictive environment (LRE) should be rewritten to incorporate the presumption favoring education in regular classes wherever possible. The commenter further stated the state definition is more stringent than that contained in the IDEA and should remain as is.	***Discussion:*** The current state definition does not contain all of the required elements of LRE as that is defined and described in IDEA. The Department disagrees the state definition is more stringent than that required by IDEA. By incorporating the IDEA definition, the presumption in favor of regular class placement is adopted. ***Change: No change.***
Sec. 10-76a-1(12) "Mediation"	**Discussion:** No comments received ***Change: No change.***
Sec. 10-76a-1(13) "Parents:" One commenter recommended the definition of "Parent" should be modified to include the IDEA language which allows an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare to act as the parent for the child.	***Discussion:*** The Department agrees with the comment and notes "Parent" is so defined in the due process regulations. ***Change: The definition of "Parent" will be revised to include language which allows an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare to act as the parent for the child.***

Sec. 10-76a-1(14) "Parties."	***Discussion***: No comments received. ***Change: No change***.
Sec. 10-76a-1(15) "PPT:" Several commenters requested the retention of the state language of PPT rather than using the IDEA language of IEP team. One commenter recommended the definition of PPT should be amended to include any professional or parent who is knowledgeable about the needs of the child may be a member of the PPT. One commenter requested retention of the language which requires members of the PPT to be knowledgeable in the areas necessary to determine and review the appropriate educational program of a child with a disability.	***Discussion***: The proposed revision aligns the membership of the PPT with the IEP team membership of IDEA which includes the parent as a participating member of the IEP team. Under the proposed revision, the parent would now be considered a member of the PPT which is not currently true under the state regulations. Under the IDEA language, either the parent or the district may include as a member of the IEP team any person with special knowledge or expertise. The IEP team as defined by IDEA requires the regular and special education teacher of the child to participate in the IEP team meeting so that persons knowledgeable about the programs the specific child needs will be present. ***Change: A technical revision was made to utilize "PPT" in the last line of the definition.***
Several commenters recommended using the same definition of PPT for both children with disabilities and gifted and talented children. One commenter recommended the PPT for children who may be gifted and talented should not include parents as members. One commenter recommended deletion of the last sentence of 10-76a-1(11) which establishes a different PPT membership for the purpose of evaluating and identifying children who might be gifted or talented.	The identification of gifted and talented children is a state process and the state may define the participants of the PPT for purposes of gifted and talented identification. Maintenance of the current PPT membership for the evaluation and identification of gifted and talented students allows districts more flexibility in the identification and evaluation process and to continue a long standing state approved process to hold a single PPT meeting on multiple students to determine if a student should be evaluated or identified. This would not be able to occur if parents were members of the PPT where evaluation and identification is discussed on multiple students. The Department declines to change this practice by defining the PPT for identification and evaluation of gifted and talented children as the IEP team. ***Change: No change.***

Sec. 10-76a-1(16) "Preschool children requiring special education."	***Discussion:*** No comments received. ***Change: No change.***
Sec. 10-76a-1(17) "Private facility:" One commenter noted the definition of private facility is confusing, could mean a regional educational service center.	***Discussion:*** The commenter is correct. ***Change: The section will be revised to explicitly exclude the regional educational service centers from the definition of a private special education program.***
Sec. 10-76a-1(18) "Related Service."	***Discussion:*** No comments received. ***Change: No change.***
Sec. 10-76a-1(19) "Special education."	***Discussion:*** No comments received. ***Change: No change.***
Sec. 10-76a-1(20) "Special education personnel."	***Discussion:*** No comments received. ***Change: No change.***
Sec. 10-76a-1(21) "Subject to the approval."	***Discussion:*** No comments received. ***Change: No change.***
Several commenters recommended the inclusion of a definition of "educational performance" to address several court decisions from the Second Circuit which limit "educational performance" in determining whether a child may be eligible for special education and related services to academics and thereby excluding functional, developmental, social and behavioral progress as measures as to whether a child may be eligible for special education. The commenter noted the courts have adopted this standard in the absence of IDEA having a specific definition of what constitutes "educational performance" for purposes of determining eligibility or the state having a standard for what constitutes "educational performance" in the determination of eligibility for special education.	***Discussion:*** In order to be eligible for special education, a child must meet three criteria as articulated in the IDEA: the child must be evaluated and found to meet the criteria of one (or a combination of) the disability categories found in the IDEA, the disability must adversely affect educational performance and because of the disability and the adverse impact, the child needs specially designed instruction. There are several Second Circuit decisions which define "educational performance" as meaning only academic performance; as a result, children who have identified disabilities but are performing adequately in academics have not been found to be eligible for special education even though they may be having difficulties with functional, developmental, social and behavioral issues. The state has, in fact, adopted a definition of educational performance which encompasses more than academic performance in the identification of children with

	emotional disturbance and children with autism spectrum disorders in state guideline documents for the identification and provision of services to children with such disabilities. A state standard, therefore, does exist in the identification of children with emotional disturbance or children with autism spectrum disorder which goes beyond adverse impact on academic performance. The Department declines to add this definition to the regulations. ***Change: No change.***
Several commenters requested a description of the Complaint Resolution Process be included in the definitions. Additionally, a commenter requested the response of the district be required to be provided to the parent.	***Discussion:*** The Department declines to add a description of the Complaint Resolution Process to the state regulations. The Department makes a brochure available on its Web site and in print which explains the process. The brochure is also available through various parent resource centers. In addition, there is a description of the Complaint Resolution Process in the Procedural Safeguards document which is routinely provided to parents. ***Change: No change***.
One commenter requested the definition section of the regulations include definitions found elsewhere in the regulations such as the definitions for "assistive tech," "consent," "at no cost," and "supplemental aids and services."	***Discussion***: The Department declines to add definitions which appear elsewhere in the regulations or that are defined in the IDEA as such are incorporated by reference. For the former, it is not necessary to have all definitions located in one section of the regulations as several of these definitions are only applicable to the section they appear in; as to the latter, we are making a conscious effort to avoid repetition of federal requirements in state regulations and incorporate them by reference. ***Change: No change***.
Section 2: Section 10-76a-2: Definitions, Gifted and Talented, Pregnancy Several commenters recommended the categories of gifted and talented be eliminated from the special education regulation as it is more appropriate to include such language in general education.	**Discussion:** By state statute, a child who is gifted or talented is a child eligible for special education. Gifted and talented cannot be removed from special education until such time as the state statute is revised

One commenter requested a statewide definition of gifted and talented, not town specific.	accordingly. The practice of the state is to allow each town to determine which of its students meet the criteria for gifted and talented. The Department declines to change this to a statewide standard. ***Change: No change.***
Several commenters requested pregnancy be retained as a condition that would grant eligibility for special education and related services. It was noted that although homebound instruction may be secured, there are many other services and accommodations that a pregnant teen may require in order to remain in school and benefit from the general education curriculum. Such accommodations might include transportation, shortened day, counseling, modified assignments or modified class schedule. The current regulations are the only legal requirements for school districts to provide support services to help a pregnant teen remain in school and make progress in her education. Several commenters agreed with the revision to eliminate pregnancy as a category of disability.	***Discussion:*** The Department agrees additional protections should be in place for pregnant students to receive services and accommodations as their condition warrants such; we do not agree to retain pregnancy as a condition that grants eligibility for special education. The homebound regulation, Section 10-76d-15 will be revised to add services and accommodations for pregnant students. ***Change: None; however, Section 10-76d-15 will be revised to provide for services and accommodations for pregnant students as their condition warrants such.***
Section 3: Section 10-76b-1: Authority.	***Discussion***: No Comments. ***Change: No change.***
Section 4: Section 10-76b-3: Effective date.	***Discussion***: No Comments. ***Change: No change.***
Section 5: Section 10-76b-4: Compliance. Several commenters requested districts be held accountable for compliance with the requirements of IDEA, as well as the state statutory and regulatory requirements. Several commenters requested	***Discussion:*** Districts must provide services consistent with IDEA, and state statutes and regulations - see Section 10-76d-1. In order to remain eligible for federal and state financial assistance, school

language which would require the state to issue sanctions against school districts for violating state or federal laws regarding the provision of services to children with disabilities.	districts are required to provide special education and related services consistent with both IDEA and state statutes and regulations. The state has a system of general supervision, including monitoring of districts through annual performance reports, focused monitoring, due process proceedings and complaint resolution to ensure services are being provided consistent with IDEA and state statutes and regulations. Corrective action and sanctions are imposed when necessary and appropriate to do so. ***Change: A technical correction was made to utilize a lower case "s" in the word section in subsection (b).***
Sections 6, 7,8, 9: Restraint and Seclusion: General Comments: Several commenters requested any further revisions of the state regulations dealing with restraint or seclusion be put on hold until Congress finishes work on federal standards for seclusion and restraint. Several commenters requested the seclusion and restraint provisions be made applicable to all students and not just students eligible for special education or students in the process of being identified for special education. Several commenters requested a complete ban on the use of physical restraint or seclusion.	**Discussion:** Several of the revisions are being made to further clarify the current regulations and there is no need to wait until Congress finishes its work on proposed federal requirements for the use of seclusion and restraint in the public schools. The Department declines to extend the coverage of the seclusion and restraint regulations to all children attending school as the state statute limits this to children eligible for special education and children in the process of being identified for special education eligibility. Similarly, we cannot ban the emergency use of physical restraint or seclusion or the use of seclusion as a behavior intervention strategy as it is allowed by state statue. ***Change: No change.***
Several commenters requested the regulations be made applicable to all private schools.	***Discussion:*** Section 46a-150 of the Connecticut General Statutes defines the entities to which the physical restraint and seclusion provisions apply. This includes certain private schools. The Department may not extend the applicability of the statute through regulation. ***Change: No change.***
Several commenters requested school districts be allowed to describe in a child's IEP how the use of physical restraint may be used as an emergency intervention provided the IEP also includes language that	***Discussion:*** The Department recognizes the need for planning for an emergency and the use of physical restraint as an emergency intervention may not be unanticipated; that is, we recognize physical restraint as an emergency intervention may be necessary and

clearly states physical restraint may only be used in an emergency situation to prevent immediate or imminent injury to the person at risk or to others.	appropriate if all other less intrusive methods of de-escalation fail. The Department declines to allow the emergency use of physical restraint to be included in a child's IEP. School districts are able to use reasonable physical force to maintain the school environment with all children and clearly may use physical restraint as an emergency intervention with children eligible for special education or children being evaluated to determine eligibility. Planning for the use of physical restraint should impact all students in a school building, not just students eligible for special education. ***Change: No change.***
One commenter stated seclusion should only be used as an emergency intervention to prevent immediate or imminent injury to the person or to others.	***Discussion:*** The state statute currently allows the use of seclusion as a behavior intervention. Its use as such may not be eliminated in the regulations. ***Change: No change.***
Section 6. Section 10-76b-8 (a) and (b): Use of seclusion in public schools, requirements.	
Several commenters recommended use of the phrase "functional behavioral assessment" (FBA) in place of proposed language as an FBA is generally understood within the context of special education as an assessment used across all major settings to assess a child's challenging behavior.	***Discussion:*** The Department agrees the assessment to be utilized is a functional behavioral assessment. The language will be so revised. ***Change: The phrase "functional behavioral assessment" shall be used to describe the assessment that shall be conducted before seclusion may be used as an intervention.***
One commenter requested that positive behavioral supports be in place and supervised by an appropriate individual (i.e. Board Certified Behavior Analyst (BCBA)); the behavior plan should be revisited monthly by the PPT reviewing objective data collected on all aspects of the Positive Behavior Support (PBS) program.	***Discussion:*** This is currently addressed by the IDEA. If behavior impedes the child's learning or that of others, the IEP must consider the use of positive behavioral interventions and supports and other strategies to support that behavior. The PPT determines the staff necessary to ensure implementation of the IEP. The Department declines to add a provision requiring the behavior plan to be revisited monthly by the PPT. The PPT will determine the frequency and

	necessity for review based on each child's individualized needs. ***Change: No change.***
One commenter requested that if seclusion is utilized as a behavior intervention strategy, implementation and impact of its use must be documented and reviewed as part of the child's behavior intervention plan in accordance with acceptable standards presented within the behavioral intervention literature.	***Discussion****:* The Department declines to include this level of specificity in the regulations. The PPT is required to monitor progress on goals and objectives and determine the appropriate assessments and evaluations to determine a child's progress on the goals and objectives of the IEP based on the individual needs of the child. ***Change: No change.***
Several commenters recommended the PPT adopts the use of seclusion as a behavioral intervention only upon the basis of qualified expert opinion based on cited research literature and if the PPT explicitly considered and ruled out any alternative interventions.	***Discussion:*** The current regulation requires the PPT to consider the results of a functional behavioral assessment and any other information determined relevant by the PPT before seclusion is utilized as a behavioral intervention. The evaluations and assessments used by the PPT to determine the appropriateness of the use of seclusion as a behavioral intervention should be considered based on the individualized needs of the student. The Department declines to mandate such specificity. ***Change: No change.***
Several commenters recommended the use of seclusion be predicated upon the securing of written parental consent prior to its use. One commenter requested consent from the parents should be secured every semester for the continued use of seclusion as a behavior intervention in the child's IEP. One commenter requested a requirement be added that the school district must obtain signed, parental consent which will be renewed biannually at a PPT for the use of seclusion as a behavioral intervention.	***Discussion:*** The Department disagrees specific parental consent should be required for the use of seclusion as a behavioral intervention strategy. Procedural protections are in place in the event the parent and the school district disagree with any provision in the child's IEP. ***Change: No change.***
Section 7. Section 10-76b-8(e): Use of seclusion in public schools, requirements.	

One commenter objected to the elimination of the requirement that the PPT convene to review the use of seclusion as a behavior intervention more than 2 times in one quarter.	***Discussion:*** The proposed change allows the PPT to determine with what frequency the PPT should be convened when seclusion is used as a behavior intervention. The Department declines to set a standard for the state as a child's individualized program and needs should be taken into account by the PPT when determining if a PPT is warranted under the circumstances. ***Change: No change.***
One commenter recommended a provision be added requiring the convening of a PPT meeting if a student is secluded excessively (i.e. more than once a week) to determine whether the program and placement are appropriate and a Board Certified Behavior Analyst must be brought in to develop a functional behavioral assessment and a behavior plan	***Discussion:*** The Department declines to add such specificity to the regulations. The PPT may determine, based on the individual needs of the child, the frequency of convening PPT meetings to address ongoing behavioral concerns including the use of appropriate staff or other experts to address the child's continuing needs. ***Change: No change.***
One commenter stated use of "quarters" ignores districts that use trimester and recommended that emergency seclusions be measured by marking periods rather than quarter to avoid having to keep a different set of records.	***Discussion:*** The Department agrees with the recommendation. ***Change: The section will be revised to refer to marking period rather than school quarter to allow for differences across school districts.***
One commenter requested the section be clarified to allow the continued emergency use of seclusion pending review of the student's program to avoid claims that seclusion was illegal in a given instance because the team had not yet met to undertake the required review. The commenter stated if emergency seclusion occurs twice and a review is scheduled, but occurs a third time before the PPT meeting occurs, the parent may claim the district has violated this provision. The commenter stated it appears to be implied that such meetings would not be necessary if the seclusion is used in accordance with the student's IEP provisions, but this should be made explicit.	***Discussion***: The Department disagrees the recommended language is necessary. By state statute, districts are allowed to use physical restraint as an emergency intervention to protect the student and others regardless of the fact the regulations require a review meeting if it's to be utilized more than twice in a marking period. The Department declines to add this to the regulations. Whether a district has improperly used physical restraint as an emergency intervention is fact specific. ***Change: No change.***
One commenter stated the phrase "by the parents and the PPT" devalues parent participation" and recommended use of "by the parents and the other members of the PPT"	***Discussion:*** The proposed revisions to the definition of the PPT adopt the IEP team membership, that is, the parent will be a member of the PPT. The section needs to be clear the parent is a member of the PPT.

	Change: The section will be revised to clarify the parent is a member of the PPT.
Section 8. Section 10-76b-8(h): Use of seclusion in public schools, requirements.	
Several commenters objected to the use of a locked room for seclusion under any circumstances and requested that language allowing a room to be locked be removed from the regulation.	***Discussion:*** The proposed revision regarding the necessity of receiving a modification from the State Fire Marshal's office for the use of a locked, latched, or otherwise secured seclusion room in effect prohibits the use of a locked seclusion room unless and until the modification is secured. ***Change: No change.***
Several commenters objected to allowing the seclusion room to remain locked for up to two minutes in an emergency.	***Discussion:*** If the modification to use a locked room is received, the 2006 Life Safety Code considers two minutes a reasonable period of time to remove an individual from a locked room at the onset of an emergency. ***Change: No change.***
Several commenters recommended the regulations retain the definition of "emergency" that currently exists.	***Discussion:*** The Department agrees the definition of "emergency" should be retained. ***Change: The definition of emergency contained in the regulations will be retained.***
One commenter stated the locking mechanism language should be removed and replaced with new language stating that any child placed in seclusion must have a professional staff member in the room with them at all times. If the student's behavior prevents the presence of a professional in the room, the adult should be immediately outside the room and directly monitoring the student on a continual basis. Several commenters stated the proposed revision which allows locks that do not automatically disengage, take up to two minutes to disengage, constant monitoring of the room and connection to fire alarm are not sufficient to ensure safety of child in a locked seclusion room.	***Discussion:*** The proposed revision requires the student to be constantly monitored if a door locking mechanism is used. The Department declines to require the presence of a staff member in seclusion with the student. The PPT will determine how and under what circumstances a staff member should be in a seclusion room with a student. The regulations currently require the student and any individual with the student in the room to be monitored through an observation window. The frequency of the monitoring when the room is not locked and any concerns about what might exacerbate the student's behavior including the frequency of monitoring the student

	while the student is in seclusion should be discussed by the PPT. ***Change: No change.***
Commenters recommended constant monitoring in all cases where a student is placed in seclusion, provision for the immediate unlocking of the seclusion room and the purchase and installation of locks that immediately disengage by school districts. One commenter recommended continuous monitoring rather than constant monitoring.	***Discussion:*** Constant monitoring is called for whenever a student is locked in a seclusion room. The PPT will determine the frequency of monitoring otherwise. The proposed revisions require the use of locking mechanisms connected to the fire alarm for automatic release when the alarm sounds. ***Change: No change.***
Section 9. Section 10-76b-11: **Reports of physical restraint, seclusion.**	
One commenter requested the Department collect data on whether or not parents receive notice on the use of seclusion and restraint and use such information for enforcement purposes.	***Discussion:*** The Department may collect the data as provided for in Section 46a-153 of the general statutes. The Department has collected the data and as a result is developing resources for the use of seclusion and restraint in the public schools. ***Change: No change.***
One commenter recommended the school district be required to inform the parents immediately after each use of restraint/seclusion. Require districts to provide parents with all data relating to the use of restraint/seclusion.	***Discussion:*** The state statute has very specific requirements for the reporting of the use of physical restraint or seclusion. Section 10-76b-9 of the regulations requires parental notification on the day of or within 24 hours after the use of physical restraint or seclusion used as an emergency intervention. The PPT determines appropriate notification of the use of seclusion as a behavior intervention. ***Change: No change.***
One commenter stated the Department needs to do more across the state to ensure uniform protocols for implementation of the seclusion and restraint requirements, perform random and regular site checks of seclusion rooms and monitor the safety of this practice over time. The Department should also train paraprofessionals on the use of Positive Behavioral Supports.	***Discussion:*** The Department has, consistent with the requirements of the regulations, provided a **Parental Notification of the Laws Relating to the use of Seclusion and Restraint in the Public Schools** brochure for use in the public schools which provides a uniform protocol for implementing the seclusion and restraint requirements. The Department will review the request to add random and regular site

	checks of seclusion rooms and monitoring of the safety of this practice. The Department offers extensive training on the use of Positive Behavioral Supports through the State Education Resource Center. School staff may elect to participate in this training as needed or as directed by their school district. ***Change: No change.***
Sec. 10: Section 10-76d-1 Special education and related services. One commenter stated 3-year-olds should not begin school programs in the middle of the school year or in the summer and should remain in the 0-3 system. The commenter recommended a cut-off date, if the child turns three by 12/1, the child can start school at the beginning of the year, if the child turns 3 after 12/1, the child should remain in 0-3 until next school year. One commenter stated the proposed regulation regarding what constitutes the school year creates a discrepancy with the current requirement that services be provided to a student through "end of the school year in which the child turns 21." One commenter stated if the proposed revision passes, services for students should stop when the student turns 21. One commenter requested the definition of "school year" be clarified stating defining the school year as July 1 to June 30 is problematic and has extended services for some students until they are almost 22 and has delayed other state agencies taking over the care for these students. If a student turns 21 between school years, during the summer months, the student should transition to adult services rather than being retained in the LEA system for another year. One commenter suggested the PPT determine whether services should continue in the event the child turns 21 during the school year based on an assessment of what is in the child's best interest.	***Discussion:*** IDEA requires that a free appropriate public education begins for a child on their third birthday, regardless of when this occurs. The Department declines to revise the regulation as requested. ***Change: No change.*** ***Discussion:*** The Department disagrees. The proposed revisions incorporate a state statutory provision which defines a school year as July 1 to June 30, see Section 10-259. The adoption of this standard eliminates inconsistencies in the provision of services to eligible students when public schools are on different schedules and, when private school programs have different schedules from public schools. As students receive services from an array of service providers, establishing a standard school year provides for consistency. ***Change: No change.***

Several commenters requested the regulations incorporate the language of the Bureau Topic Brief on Extended School Year Services.	***Discussion:*** The Department declines to adopt the contents of the topic brief on extended school year services as a regulation. The topic brief contains information relative to the current case law which can change at any time. ***Change: No change.*** ***Change: In subsection (b), a technical correction was made to eliminate the phrase "local or regional" in subparagraph (5) to conform to the definition of board of education.***
Several commenters expressed concern the proposed language regarding services for gifted and talented children would eliminate special education and related services for gifted children who were also disabled. One commenter requested gifted and talented children be provided with related services consistent with the IDEA.	***Discussion:*** The Department agrees the proposed language raises a concern as articulated. IDEA specifically requires the provision of special education and related services to children who are disabled even if the child is advancing from grade to grade. The IDEA does not require services for children who are gifted or talented. ***Change: The proposed revision will make clear that children who are eligible for special education are not precluded from receiving such services if they are also found to be gifted and talented.***
One commenter stated subsection (c) is rewritten with no limitations on school districts; the provisions should require that contract personnel be qualified to perform evaluations, exercise independent, professional judgment, abide by the Code of Ethics of their profession and be available for an exchange of information with the parents. Districts should be obliged to disclose the nature of its relationship with each contractor under the Freedom of Information Act.	***Discussion:*** The Department disagrees. School districts are constrained by the requirement they provide a free appropriate public education in the least restrictive environment for children eligible for special education in accordance with the requirements of the IDEA and state statute and regulations. This would include utilizing qualified personnel to provide such services and the expectation that a professional would exercise professional judgment and abide by their Code of Ethics in the performance of their duties. Parents may receive information concerning school districts relationships with contractors under the Freedom of Information as such is allowed by the law. ***Change: No change.***
One commenter stated if school districts are going to be held accountable for ensuring the services provided to students in private	***Discussion***: The Policies, Procedures and Standards for Approval of Private Special Education Facilities contain language which requires

schools are provided consistent with the IDEA and related state statutes and regulations, the standards for private school approval should contain language requiring private schools to adhere to federal and state statutes and regulations. Several commenters questioned removing the contract language from the regulation, one stating that removing the contract language will not allow a district to show it's providing a free appropriate public education and would weaken enforcement of such.	private school seeking approval as special education facilities to have written policy to assure that the facility complies with the provisions of the IDEA, Public law 101-476, Section 504 of the Rehabilitation Act of 1973, The Family Rights and Privacy Act, Sections 10-76a to 10-76q, inclusive of the Connecticut General Statutes and the regulations adopted there under; Public Act 96-246; and all other relevant federal and state laws and regulations and local requirements. The IEP developed at the placement PPT should outline necessary program, supports and services. When the private facility accepts the student, per the standard, the facility is saying they are able to implement the program in full. The removal of the contract language allows a school district to determine its own need for defining the provision of services and the contents of any contract it may need to have with a private facility for the provision of services. ***Change: No change.***
Sec. 11. Section 10-76d-2 Personnel. One commenter questioned why the supervisory ratios were being eliminated when establishing such provides additional support for staff. Several commenters requested a definition of "direct supervision" as follows: means that a certified or licensed professional drafts the lesson or treatment plan used, trains the aide in the implementation of that plan and observes the aide working with the student on a frequent basis. The supervisor should be responsible for all aspects of the aides' performance and verify all reports of progress.	***Discussion:*** The supervisory ratios were effectively repealed by the legislature in 1991 with the adoption of Section 10-76dd of the general statutes. ***Change: No change.*** ***Discussion:*** "Direct supervision" is defined in both the IDEA and NCLB as follows: "a paraprofessional works under the direct supervision of a teacher if: (1) the teacher prepares the lessons and plans the instructional support activities the paraprofessional carries out and evaluates the achievement of the students with whom the paraprofessional is working; and (2) the paraprofessional works in close and frequent proximity with the teacher." The definition will be added to this section, see below. ***Change: See below. Several technical corrections were also made to (a) as follows: "performs" was substituted for "carries out", the spelling of "aides" was corrected and in subsection (c), an***

	unnecessary comma was removed.
Several commenters recommended supervisors be personally liable for the actions of aides and performance ratings of professionals, both teachers and related service personnel be based on the performance of the aides under their supervision. If an aide makes a very serious error, the teacher or related service provider should be sanctioned. If the service provider is on contract, pay under the contract should depend on the success of the aides.	***Discussion:*** The Department disagrees. Each aide is responsible for his or her own actions and is required to meet standards of professional and ethical conduct as discussed in the "Guidelines for Training and Support of Paraprofessionals Working with Students Birth to 21," developed and issued by the Department in 2008. ***Change: No change.***
Several commenters recommended language be added to the regulation to require pre-service and in-service training of aides to be trained in the area of instruction or the provision of related services in which they are employed, require additional training on specific disabilities or behavioral management, prohibit aides from providing curriculum modification or adaptations or hands on manipulations, state that aides are not to act outside the scope of their profession and cannot provide direct instruction to students.	***Discussion:*** The standards for the training, supervision and functions of aides are contained in the guideline document "Guidelines for Training and Support of Paraprofessionals Working with Students Birth to 21," developed and issued by the Department in 2008. The IDEA at 34 CFR 300.156 allows a state to establish such standards by state law, regulation, or written policy. The "Guidelines" is the written policy of the Department which articulates standards for aides working with students with disabilities. The Department declines to add these standards to the regulations. ***Change: No Change.***
One commenter stated subsection (a) is not clear. What does verify mean? Aides don't write report. Does this mean certified staff would observe the aide working with the child and see that the data is being collected according to the protocol set by the certified staff? Does the teacher have to be present every time data is taken? One commenter requested that the aide should be required to provide detailed written reports and provide a copy for review by the PPT.	***Discussion:*** The Department agrees. The definition of direct supervision from the IDEA will be incorporated into this section. ***Change: "a paraprofessional works under the direct supervision of a teacher if: (1) the teacher prepares the lessons and plans the instructional support activities the paraprofessional carries out and evaluates the achievement of the students with whom the paraprofessional is working; and (2) the paraprofessional works in close and frequent proximity with the teacher."***
One commenter recommended the aides should be available for PPT meetings and be responsive to questions or concerns presented by PPT	***Discussion:*** The Department declines to add this provision to the regulations. Participation of an aide in a PPT meeting is within the

members.	discretion of the district. ***Change: No change.***
One commenter recommended adding the word "aide" to subsection (c) to ensure that aides who are providing instruction or services receive in-service and other training opportunities.	***Discussion:*** The Department disagrees. The training of aides and appropriate in-service activities for aides (and other staff) is determined by the PPT as a support service for staff and is described in each child's IEP as is appropriate. ***Change: No change.***
One commenter recommended adding "due process hearing officer decisions" to subsection (c) as a condition under which the state can require mandatory training of school district staff.	***Discussion:*** The Department agrees. ***Change: The language "or due process hearing officer decisions" will be added to subsection (c) after the words "monitoring activities."***
One commenter stated if the state is going to require attendance at professional development, the state should pay for it. Several commenters supported the language in subsection (c) concerning the required training.	***Discussion:*** The Department currently subsidizes training from IDEA funding in the amount of $8 million. ***Change: No change.***
One commenter recommended all in-service activities must include an outcome assessment component that pertains to documentation of the impact or lack thereof on delivery of services.	***Discussion:*** It is not appropriate to use an outcome assessment component to evaluate all training activities; not all training activities offered are related to service delivery and, there is not always a direct causal relationship between training and an instructional outcome. The Department is utilizing the Results-Based Accountability report card to evaluate all State Education Resource Center training activities to assess impact on the delivery of services. ***Change: No change.***
Sec. 12. Section 10-76d-3: Length of School Year. Several commenters recommended the Bureau Topic Brief on Extended School Year (ESY) be incorporated into the regulations.	***Discussion:*** The Department declines to adopt the contents of the topic brief on ESY services as a regulation. The topic brief contains information relative to the current case law which can change at any time.

	Change: No change.
Several commenters recommended clarification of the proposed requirement that the decision of the PPT regarding extended school year programming and services should be made with sufficient time to allow the parent to challenge what is offered before the extended school year program begins. Several commenters requested a definition of "sufficient time" in this context. One commenter stated the proposed revision is too difficult to implement and does not take into account difficulties in making the extended school year decision, especially the types and timing of data reviewed to make such decision. Due process takes 75 days which means the decision would have to be made in December. The proposed revision would also require the PPT to write the IEP beyond a one year period, which is not permitted. This commenter recommends the provision be deleted.	***Discussion:*** The Department disagrees. The proposed revision takes into account the need of the PPT to review data to make a decision regarding a student's eligibility for ESY stating the decision regarding ESY should be made in a timely fashion unless it is clearly not feasible to do so. This would include the need of the PPT to review data and other information that may be available only at the close of the school year. The proposed revision does not require the PPT to write an IEP beyond one year, the IEP may be for 365 days which would constitute a year for the child in question. ***Change: No change.***
One commenter recommended the proposed revision be amended to allow sufficient time to challenge and receive a due process decision on the determination of eligibility for extended school year services. The challenge can be defined to include resolution through a due process hearing.	***Discussion:*** The Department disagrees. The parent may choose to challenge the determination through alternate dispute resolution and not utilize the due process hearing system to resolve the dispute. ***Change: No Change.***
One commenter suggested requiring the PPT meeting at which the extended school year determination is made to be convened no later than April 30th for extended school year considerations stating parties needed at least 50 calendar days to challenge the PPT decision and have a decision from the hearing officer prior to commencement of the extended school year program. Several commenters suggested this requirement be eliminated.	***Discussion:*** The Department disagrees. As stated above, there may be legitimate reasons why the PPT cannot meet earlier in the school year to make the ESY determination. Each district should have the flexibility to scheduled PPT meetings according to the needs of the children they are serving. ***Change: No change.***
Several commenters requested clarification to which school year extended school year services apply: is it a continuation of the prior year's services or part of the upcoming school year's services? One commenter indicated this is particularly important if the student moves in the summer—who's responsible for the IEP? One commenter	***Discussion:*** The purpose of ESY is to carry forward progress made during the school year just completed; this has historically been the practice. If the student moves during the term of the ESY services, the new school district is obligated to provide the services in the IEP until such time as they convene a PPT meeting to review, revise or develop

requested that extended school year services be defined as an extension of the services provided to the child during the prior school year.	the IEP. While technically the ESY services begin in the next school year, the services are added onto the school year that just completed. ***Change: No change.***
Sec. 13: 10-76d-4. Physical facilities and equipment. One commenter recommended subsections (a)(2), (3), (4) be revised to include language to ensure that all facilities, whether owned, rented or leased by a board of education conform to the accessibility requirements of the ADA and Section 54 including the implementing regulations and official policy guidance for the removal of barriers and ensuring access to public entities issued by various federal agencies including the department of education, department of justice and department of transportation. One commenter stated the jump in the inventory requirement from $200 to $5,000 is too extreme and recommended a figure in between be selected such as $500 or $1000. Several commenters requested this section be reviewed with Section 10-76y of the general statutes to ensure conformity between the section. One commenter recommended incorporating the provisions of Section 10-76y into the regulations.	***Discussion:*** The regulation requires facilities used for the provision of special education meet all applicable building, health and safety codes. The specificity requested is not necessary. ***Change: No change***. ***Discussion***: The IDEA at 34 CFR 300.144 and 2 CFR Part 225, Appendix B describes control of property purchased with federal funds in an amount of $5,000 or above. ***Change: No change***. ***Discussion:*** The proposed revisions are consistent with Section 10-76y of the statutes. It is not necessary to incorporate the statute provisions into the regulations. ***Change: No change***.
Sec. 14: Section 10-76d-5: Class size and composition.	***Discussion***: No comments received. ***Change: No change.***
Sec. 15: Section 10-76d-6: Identification and eligibility of students. One commenter stated the proposed language reads that all children need to be evaluated without regard to consent. The commenter recommended the phrase “in accordance with the IDEA” be added	***Discussion:*** The Department agrees that adding such language will clarify that identification and evaluation will be conducted in accordance with the IDEA, which includes securing written parental consent before the initial evaluation is conducted.

after the phrase "located, identified and evaluated" to clarify that identification and evaluation would be conducted in accordance with the IDEA, which includes parental consent for evaluation. One commenter stated the regulations should more specifically identify which school district is responsible for identification and evaluation based on a variety of possible circumstances. One commenter requested responsibility for child find for private school children be clarified as the Department has recently taken the position that if a parent requests initial or reevaluation of the home school district, the home school district must evaluate the child.	***Change: The phrase "in accordance with the IDEA" will be added after the phrase "located, identified and evaluated."*** ***Discussion:*** The IDEA is very clear on which school district is responsible for children attending nonpublic schools, the district in which the nonpublic school is located. Additionally, the comments to the 2006 federal regulations, as well as policy memos from the Office of Special Education Programs, state although OSEP would not encourage the practice, where parents are requesting a free appropriate public education for their child, they have the right to have the resident school district conduct the evaluation and may also request an evaluation from the district where the nonpublic school is located. ***Change: No change.***
One commenter stated Child Find obligations for children who are educated at home are problematic. The commenter recommended districts should not be required to locate, identify or evaluate children who are educated at home because they have been withdrawn from school. Another commenter asked for clarification of the language with regard to children being educated at home questioning whether the language allows a child being educated at home to be eligible for all special education services from the local district.	***Discussion:*** IDEA Child Find obligations extend to all children residing in the state, without regard to where the child is receiving instruction. The IDEA allows states to determine if children being educated at home by their parents are considered parentally placed private school students for the purpose of being counted for and having access to, services for parentally placed private school children funded by IDEA. The Department agrees clarification regarding access to special education services for children being educated at home by their parents is warranted. It has been a long standing policy of the Department that children being educated at home by their parents are not considered parentally placed private school students for the purpose of having access to IDEA funded services. ***Change: The phrase "Children being educated at home by their parents are not considered parentally placed private school children for the purpose of access to an IDEA service plan" will be added to this section.***
Sec. 16: Section 10-76d-7: Referral. One commenter recommended that districts be required to provide referral information to physicians, social workers and clinics that are within reasonable proximity of a school district, engage in outreach	 ***Discussion:*** School districts make this information available through their Child Find procedures which include publicizing referral information in local newspapers and sending information to

efforts or by making copies of referral information available. One commenter recommended adding language which directs parents to the state's parent training and information center as an alternate source of information and support for parents.	professional offices. Information about the state parent training center is available from multiple sources. ***Change: No change.***
One commenter noted in Subsection (a) (2) the reference to "local or regional board of education" could be taken to exclude other entities defined under "board of education."	***Discussion:*** This is a drafting error. No limitation was intended. ***Change: The language "local or regional" will be removed from this sentence.***
One commenter stated districts should be required to clearly outline the referral process for special education services on their Web site, in the student/parent handbook or in other formal communication materials.	***Discussion:*** The proposed language requires the districts to make referral and evaluation procedures known to parents and staff. Districts may utilize the student handbook, the district Web site or other means to communicate this information. ***Change: No change.***
Several commenters objected to language which addressed parental concerns being placed in writing. One commenter stated if a parent expresses a concern about his/her child's possible disability by phone call, at a parent-teacher conference or in a call to the teacher, the school official who receives that communication should be obliged to fill out a referral form for the parent and commence the referral process. Another commenter stated any request should trigger a referral and the regulations should include provisions that would require school personnel to make a referral to special education upon being asked by a parent for an evaluation. Several commenters recommended if the parent presents concerns orally to a staff member, the staff should be required to assist the parent in writing a referral. One commenter stated a provision should be added to require school districts to clarify whether a parent is seeking a referral so the district can then commence the referral process. Districts should complete the standardized referral form on the parent's behalf.	***Discussion:*** The IDEA does not address referral for evaluation; this is strictly a state process. The proposed language sets reasonable parameters for expressing concerns a student might be eligible for special education which would trigger a referral. Each school district has written policies and procedures which describe the referral process. It is not appropriate to initiate a referral for a special education evaluation every time a concern about a child is expressed by either parents or school staff. Intervention in general education may be appropriate and should be explored prior to a referral. It is expected that school staff clarify with parents what a parents concerns might be with regard to the education of their child and proceed accordingly. ***Change: No change.***
One commenter stated the proposed revisions are too vague and	***Discussion:*** The proposed revisions utilize language taken from the

subject to contradictory interpretations. A concern expressed in writing should trigger the school district to provide the parent with a referral form and access to district personnel to clarify the concerns and direct parents to the appropriate venue. The proposed revisions will force districts to hold many PPT meetings whenever there is a written expression of concern.	IDEA, see Section 34 CFR 300.534 which establishes criteria for a district having the knowledge a student might be a student with a disability based on actions taken by the student's parent or school staff member. The proposed standard already exists. The Department disagrees the proposed standards will increase the number of PPT referral meetings. Districts are required to process requests for referrals in a timely and effective manner. The proposed revisions respond to complaint findings where districts failed to convene PPT meetings in a timely fashion when parents expressed concerns about their children's education. ***Change: No change.***
Several commenters stated the issue is not that parents can't put their requests in writing, but that parents do not understand the referral and evaluation process.	***Discussion:*** The proposed revisions require districts to publicize the district's policy and procedures for making a referral to staff and parents. ***Change: No change.***
One commenter stated the timeline for referral should begin when a parent requests an evaluation, whether in writing or not. One commenter recommended the date of the referral should be the date the staff member or administrator heard the parent express this concern. One commenter suggested the date of the referral should be the date the teacher or school personnel receive the request for the referral from the parent.	***Discussion:*** The Department declines to have the referral process be initiated by a verbal request from the parent for an evaluation. The standards contained in the proposed revisions are reasonable and appropriate. The proposed revisions set the date of referral as the date school personnel receive the written request or concern expressed in writing by the parent. When parents discuss concerns about their children's performance with school staff members, the staff members have the responsibility to clarify what the parent is requesting and to direct the parent to the appropriate resources in the district. The school staff member has the authority to initiate a referral based on the concerns expressed by the parent. ***Change: No change.***
One commenter asked for clarification of the language "the date of referral is not the date the board referral form is filled out by the board." One commenter requested the following be added after "the	***Discussion:*** The Department agrees this language needs to be clarified. It was meant to address establishing a date of referral when a parent submitted a request for a referral as described in the section.

date of referral for purposes of this subsection and section 10-76d-13 is the date board personnel receive such a request:" "Where a parent does not submit the standard referral form, but instead submits a concern as explained above, the standard referral from shall be completed by an employee of the board of education after the written concern has been received." One commenter questioned who must complete the standard referral form.	***Change: Subsection (a) (3) will be revised with the addition of the following language before the last sentence of the section: "If a parent does not submit the standard referral form, but instead submits a concern as explained above, the standard referral form shall be completed by an employee of the board of education after the written concern has been received. The date the written concern from the parent is received by an employee of the board is the date of the referral for purposes of this section and section 10-76d-13."***
One commenter recommended language be added to Section 10-76d-7(a) (3) at the end of the last sentence to require the district "to prepare a written record of a meeting between a parent and supervisory or administrative personnel that the parent had stated during such meeting that their child may be a child with a disability and/or that the parent had requested such an evaluation."	***Discussion***: The Department declines to add this requirement. If a parent makes these statements at a meeting, a referral is being requested. The referral form would be filled out and would be the documentation of the meeting and the parent's concerns. ***Change: No change.***
One commenter stated the requirement that general education interventions be tried before a child is referred for a special education evaluation is contrary to IDEA and cites Forest Grove v. T.A, a case from the US Supreme Court which deals with services for children in nonpublic schools. One commenter stated interventions in general education would delay referral because not all alternative procedures and programs in general education are appropriate.	***Discussion:*** The Department disagrees. IDEA does not require an automatic referral for a special education evaluation for every child who is struggling in school. The Forest Grove case deals with whether or not parents are entitled to reimbursement for a unilateral placement if the child never received specially designed instruction from the school district prior to the parents placing the child in a nonpublic school. It is not appropriate to refer every child who is having difficulties to the PPT for a special education evaluation. An array of services, including tiered interventions, is available through general education to address the child's difficulties. The available use of interventions makes a referral to special education at the first sign of a child's difficulties premature. School staff will exercise their professional judgment in selecting the intervention that will most appropriately meet a child's needs and determine at what point a referral to special education is appropriate if there is a suspected disability. A district must accept a referral from a parent at anytime. ***Change: No change.***

One commenter requested that Subsections (b) and (c) be reconciled arguing the language requiring a prompt referral to the PPT is at odds with the need to use pre-referral strategies.	***Discussion:*** The Department disagrees. Subsection (c) describes a series of behaviors and performance issues that should have been addressed through general education interventions before they escalated or such behaviors may happen suddenly without warning. If a student engages in these behaviors and general education interventions have not been tried, a referral to the PPT is appropriate to provide immediate intervention to address the student's difficulties. ***Change: No change.***
Several commenters requested language to clarify that parents or school personnel can make a referral at any time for an evaluation, regardless of whether the student has started or completed the scientific research-based instruction (SRBI) process. One commenter questioned whether requiring the convening of a PPT meeting when parents request it is in conflict with the state SRBI guidelines: there are specific provisions in the state SRBI guidelines which address the issue of SRBI delaying or replacing a referral for an initial evaluation. Several commenters requested language be added that indicates a district cannot delay or defer initial evaluation simply for the district to continue SRBI.	***Discussion:*** The proposed language is very clear the use of general education strategies cannot delay or deny the processing of a referral or the convening of a PPT meeting to process that referral. Once a referral is made, it must be processed and a PPT must be held regardless of what kinds of interventions may be provided in general education. The PPT has the authority to determine if an evaluation is warranted at the time the referral is made. ***Change: No change.***
One commenter stated the section has a loophole that will allow districts to deny an evaluation of a suspected learning disability and cites the provision that requires convening a PPT for consideration of an initial referral.	***Discussion:*** The PPT has the authority to refuse to conduct an evaluation of a student. The reasons for this refusal must be articulated in the prior written notice provided to parents after the PPT meeting where this decision is made. ***Change: No change.***
Several commenters requested more specific language for subsection (c). One commenter requested language: to require the convening of an IEP team meeting whenever any of the following occur: (1) a student has been placed on out of school suspension for more than	***Discussion:*** The Department declines to add this language. The proposed language does not allow the PPT to address student needs individually and within the context of the student's individual situation. ***Change: No change.***

five days in total during a school year; (2) a student has been absent for more than ten days during a school year; (3) a student has failed or is in danger of failing an academic course; and (4) a student repeatedly fails to turn in homework. One commenter requested that victims of bullying be automatically referred to the PPT for evaluation.	
One commenter requested that after the language "children who have been suspended repeatedly," the following language should be added: "over a short period of time for substantially similar behaviors", and after the language "marginal level", add "as determined by the professional judgment of the student's teachers or school administrators when such school personnel have reasons to suspect the child may be a child with a disability who may require specialized instruction."	***Discussion:*** The Department declines to add the language requested as it is too limiting. Each child's situation is different and school staff should respond to student needs on an individual basis. A parent also has information on whether a student's behavior, attendance or progress in school is unsatisfactory or at a marginal level of acceptance. ***Change: No change.***
One commenter requested the terms "supervisory or administrative personnel of the board of education" and "board personnel" be reconciled.	***Discussion:*** The use of different terms is not mutually exclusive but describes the staff of school districts that may receive referral requests from parents which may include both professional and support staff. ***Change: No change.***
One commenter noted the 5 calendar days notice required after receiving a referral should return to the 5 school days timeline to take into account school breaks and other breaks in the school year.	***Discussion:*** This change will be made as the regulations will not be adopting calendar days unless otherwise specified. ***Change: No change; this will revert to school days once the definition of days reverts to school days.*** ***Change: A technical revision was made to subsection (a)(3), the word "indicate" was corrected to "indicates".***
Sec. 17: Section 10-76d-8: Notice and Consent. NOTICE One commenter requested a decrease in the information required to be sent to parents as prior notice, elimination of the requirement to notify parents about the parent's right to review and obtain copies of	***Discussion:*** The current regulations are not reflective of the IDEA requirements for the content of notice. IDEA requires: a description of the action proposed or refused by the district; a description of each

records that served as the basis for decision, to obtain an independent evaluation, to refuse consent and revoke consent. One commenter requested that notice regarding the parental right to review and inspect records remain.	evaluation procedure, assessment, record, or report used as a basis for the proposed or refused action; a description of other options the PPT considered and the reasons why those were rejected; a description of other factors relevant to the district's proposal or refusal; and a statement that the parents of a child with a disability have protection under the procedural safeguards (including the right to review and inspect education records). If this notice is not the initial referral for evaluation, the notice must also include the means by which the parents can obtain a copy of the procedural safeguards and sources for the parents to contact to obtain assistance in understanding the provisions of the IDEA. ***Change: No change.***
Several commenters stated the notice requirements should remain unchanged. One commenter requested the language that has a timeline for getting the prior written notice home should be eliminated and the required notice should be provided at the PPT meeting. One commenter stated the federal requirements for notice do not contain the five day advance written notice requirement of the state regulations and this should remain unchanged. One commenter requested the prior notice should run from when the parents are provided with written notice. One commenter requested the timeline be changed from 10 days to 15 days to ensure sufficient mailing time to parents.	***Discussion:*** Districts are required to follow the IDEA requirements which are more extensive than the state requirements. When a parent is unable or unwilling to attend a PPT meeting, the district must provide the parent with a copy of prior written notice. A timeline is necessary to ensure parents receive this notice. The proposed revisions maintain a timeline for parents to receive notice. The Department agrees the state requirement for notice of referral should remain. The Department agrees the clarification is needed regarding the receipt of prior notice by the parent. ***Change: The requirement that parents receive written notice of referral will be included. Language will be added to clarify that the parent must receive prior written notice at least 10 school days before the district takes action as discussed at the PPT meeting.***
One commenter stated the receipt of prior written notice to the parent before the district takes, or refuses to take an action, should be seven calendar days; the proposed change from 5 school days to 10 calendar days could mean that notice would be delayed for 8 school days. Another commenter stated the written prior notice requirement should be set at 10 school, rather than calendar days.	***Discussion:*** The definition of days is to be changed back to school days. The language used to describe the distribution of the prior written notice to parents will be clarified: the parent will receive such notice 10 school days before the board takes action. The purpose of prior written notice is to allow the parent time to consider the action. The parents and the district can agree to implement the action

	proposed by the district sooner than the parent receives the prior written notice document. ***Change: No change.***
CONSENT Several commenters objected to language which presumes parents deny consent for initial evaluation, re-evaluation or initial receipt of services if the parents do not reply within 10 days of the district's request for written consent. Several commenters requested that districts be required to make repeated and aggressive attempts to gain parental consent before it is assumed a parent has refused consent; a commenter requested districts be required to make serious and documented efforts to elicit a response from parents.	***Discussion:*** Districts are required to complete initial evaluations and provide special education to eligible children within a 45 school day timeline from the date of referral. There must be an end date for the district to report. If a parent refuses to provide consent for the initial evaluation or for the initial receipt of services, the district has met its obligation to offer a free appropriate public education to a child. Districts currently provide documentation of their efforts to secure parental consent; an additional state requirement is not necessary. The IDEA does not require such documentation. ***Change: No change.***
One commenter requested language that parental refusal to consent does not occur if the district fails to fill the consent form out correctly.	***Discussion:*** The Department declines to add this provision. IDEA does not require it. ***Change: No change.***
One commenter requested language be added to require the district to inform the parents in writing that the refusal to provide the requested consent shall be construed as the parent's refusal of an initial evaluation, reevaluation or for the initial receipt of special education and related services. A second commenter requested similar language with the addition of a notice to the parents the parents may refuse consent and the district cannot provide the evaluation or initial receipt of services as proposed because the parent has not provided consent.	**Discussion:** The state consent forms for evaluation, reevaluation and initial placement contain the requested language. The Department declines to add this to the regulations. ***Change: No change.***
One commenter noted the state form for consent for placement needs	***Discussion:*** The Department agrees with this analysis and is revising

to be changed to separate out consent for initial receipt of services, placement and the IEP.	the forms. ***Change: No change.***
One commenter noted the proposed revisions eliminates the CT requirement for consent for initial placement or private placement; this leaves parents with no alternative but to file a due process complaint if they object to any placement decision the district makes and effectively strips the parents of their rights to be equal participants on the IEP team. The commenter recommended adding back in language that requires parental consent for initial placement and private placements.	***Discussion:*** The proposed revisions to the regulations do not eliminate the need for consent prior to the initial receipt of services. The proposed regulations do eliminate the need for specific parental consent for a private school placement. The latter consent is being removed as IDEA does not require such consent. Parents are equal members of the PPT and whenever there is a dispute either the board or the parent has the right to request due process except where IDEA prohibits a district from utilizing due process to override a parent's refusal or revocation of consent for the receipt of services. ***Change: No change.***
One commenter questioned whether the proposed revisions would allow districts to refuse to provide a free appropriate public education to students quoting the language where the district may propose or refuse to initiate or change the student's identification, evaluation, or placement.	***Discussion:*** Districts are not allowed to refuse to provide a free appropriate public education to eligible children. Districts may find a child ineligible and therefore are not required to provide services. The language is compatible with IDEA language regarding prior written notice. ***Change: No change.***
Sec. 18: Section 10-76d-9. Evaluation.	
One commenter recommended language be added to the regulation to declare a district' s refusal to conduct an initial evaluation constitutes a finding the child is not eligible for special education and confers the right to an independent evaluation on the parent	***Discussion:*** A decision at a PPT meeting to refuse to conduct an evaluation is not a determination of a child's eligibility for special education. A parent retains the right to challenge the refusal to conduct an evaluation through due process. ***Change: No change.***
One commenter recommended that section 10-76d-9(a) be amended by adding the following after the first sentence "The board can rely upon an evaluation obtained by the parent prior to the PPT as its initial evaluation or reevaluation provided that such evaluation is either consistent with the IDEA or substantially complies with the provisions	***Discussion:*** The IDEA requires boards to consider information brought to the PPT by the parent without limitation. An additional state requirement is not necessary. ***Change: No change.***

of the IDEA for such evaluations." One commenter stated the proposed revisions eliminates the requirement that evaluations of children with impaired sensory, manual or speaking skills use tests that accurately reflect the child's aptitude or achievement level rather than reflect the child's impairment unless the purpose of the test is to measure those impairments.	***Discussion:*** The IDEA requirements for evaluation include these requirements. ***Change: No change.***
CRITERIA FOR INDEPENDENT EVALUATORS Several commenters questioned the criteria being utilized by districts to set a standard for the selection of an independent evaluator as being inconsistent with the IDEA. Several commenters questioned whether the state requirement that the evaluator be certified or licensed was contrary to the IDEA standard that the evaluator be qualified. One commenter included copies of written criteria for the selection of independent evaluators from two school districts requesting the Department review these to determine if they are consistent with IDEA claiming the policies are not consistent.	***Discussion:*** The state requirement that the independent evaluator be either certified or licensed is the definition of whether the evaluator is qualified to perform an evaluation. IDEA allows this. The Department will review the written policy submitted and determine if the criteria utilized for the selection of independent evaluators is consistent with IDEA. The Department has the authority to review any written policy of districts that establishes criteria for the selection of independent evaluators; a parent or other person or group has the right to file a complaint with the Department if they believe a requirement of IDEA is being violated. When complaints regarding district criteria for the selection of independent evaluators are received, the Department investigates. Whether an evaluator who is neither certified nor licensed to perform an evaluation is qualified to perform an evaluation may be an issue in due process; a hearing officer may rule on the appropriateness of an evaluation conducted by a person who is neither certified nor licensed to perform evaluations. ***Change: No change.***
Several comments were received criticizing school districts for filing for hearings to defend their evaluations when parents submitted requests for independent evaluations. Several commenters recommended	***Discussion:*** Districts are required by IDEA to either pay for or file for a hearing to defend the district evaluation when a parent requests an independent evaluation. The regulations cannot be revised to prohibit

language that would state the district has no obligation and no standing to proceed with a hearing if the parent withdraws their request for an independent evaluation.	a district from doing this as it would be in violation of the IDEA. Once a parent requests an independent evaluation and the board files for due process, whether the hearing should proceed is up to the hearing officer. ***Change: No change.***
One commenter requested the Department provide clarification on the "one evaluation per year limitation" contained in the IDEA. Does it mean only a single evaluation, no matter how many different evaluations were made by the school or just one evaluation per type of evaluation performed for the school? Does it mean that the independent educational evaluation must be the same type as the school's evaluation, or can it be a more comprehensive evaluation such as a neuropsychological or a test in an area of possible disability not performed for the school?	***Discussion*:** The Department declines to define a right extended in the IDEA. As fact specific case law is developed, the right to "one evaluation per year" is defined. ***Change: No change.***
One commenter requested the regulation be amended to define a board's obligations for an independent educational evaluation as follows: "Any board of education may provide the text of 34 CFR 300.502 to parents providing notice of their intent to pursue an IEE at public expense. A board of education may append to such text a copy of any published board approved policies for the retention of independent consultants by the board of education. No board of education shall issue, promulgate, distribute, publish or provide any other rules, regulations, guidelines, criteria or similar document purporting to explain the independent educational evaluation process to parents."	***Discussion:*** The Department declines to add such provisions to the state regulations. The right to an independent educational evaluation is explained in detail in the Procedural Safeguards document which is available to parents in print form at least once a year and always upon request. IDEA provides clear direction on the establishment of criteria for the selection of evaluators, whether the evaluation is initiated by the board or by parental request for an independent evaluation. ***Change: No change.***
Several commenters stated that parents have the right to an independent educational evaluation both when they disagree with an evaluation conducted by the district and when the district refuses to support an evaluation requested by the parents and the regulations should be amended as such.	***Discussion:*** The proposed revisions adopt the IDEA criteria. The right to an independent educational evaluation attaches when the parent disagrees with district's evaluation. If the district refuses an evaluation, the parent has the right to initiate due process to secure the evaluation. ***Change: No change.***

Several commenters requested a specific timeline for when a district must file for due process to defend its evaluation when a parent submits a request for an independent evaluation and, if the district fails to file within the prescribed timeline, the district waives its right to defend its evaluation and shall pay for the independent evaluation requested by the parent. A commenter proposed a process by which the district should respond to a request for an independent educational evaluation by scheduling an IEP team meeting to discuss the request.	***Discussion:*** The Department declines to amend the regulations as requested. It is well established by current case law that if a board fails to file for due process to defend their evaluation in a timely fashion, the board forfeits the right to defend their evaluation and must pay for the parent's evaluation. As noted earlier, boards are filing for due process to defend their evaluations when parents present requests for independent evaluations. ***Change: No changes.***
One commenter recommended language to specify the right of a parent to observe any program or placement proposed by a district and the right to interview staff of such program or placement. The commenter requested additional language to establish the right of the parent to be accompanied by or send in lieu of the parent an expert to conduct such observation and interviews. Any parent or expert observing would be bound to safeguard the confidentiality of other students sees. To address this confidentiality issue, the state should promulgate a form for parents or their experts to sign.	***Discussion:*** The Department declines to add language describing a right that is not included in the IDEA. Under state statute, the board has the responsibility to maintain the schools in its jurisdiction and may adopt policies and procedures to set standards for classroom observation and the interviewing of school staff. ***Change: No changes.***
One commenter requested the regulations include a time limit on when parents can request an independent evaluation from the time they disagree with an evaluation conducted by the board for one year from the date of the evaluation with which the parent disagrees. The evaluation must be conducted and received by the district within 60 days of the district's consent to publicly fund the IEE subject to any contractual arrangement with the board or unusual circumstances which justify an extension of the timeline.	***Discussion:*** The Department declines to set a limitation of one year on the request for an independent evaluation. The current limitation for filing for due process is two years from the date the board refused or proposed an action with which the parent may disagree. ***Change: No change.***
Several commenters recommended the regulations be amended to require boards to pay for any report, evaluation, observation or testimony of an expert retained by the parent where the board used such information to make any change in a student's eligibility, program	***Discussion:*** The board is required to consider any information brought to the PPT by the parent. The IDEA does not include a requirement that if the PPT utilizes this information as described, the board is obligated to pay for it. The Department declines to add this right to the

or placement.	state regulations. ***Change: No change.***
USE OF SCIENTIFIC RESEARCH BASED INTERVENTION (SRBI) IN THE EVALUATION OF A LEARNING DISABILITY (LD)	
Several commenters opposed the adoption of criteria that measures a child's response to SRBI as part of the evaluation for a learning disability.	***Discussion:*** The IDEA requires the adoption of criteria for determining whether a child has a specific learning disability and requires the states to permit the use of a process based on the child's response to SRBI or other alternative research-based methods for determining if a child has a specific learning disability. The Department has elected to require the use of such criteria. ***Change: No change.***
Several commenters recommended that a timeline be established for the use of SRBI as part of the evaluation for a learning disability prior to referral for special education.	***Discussion:*** Use of SRBI is a model of prevention that focuses on providing all students with the instruction and intervention they need to be successful in school. The timeline should be determined based on the intervention selected and the resulting progress monitoring data. Once a PPT decision has been made to move forward with a comprehensive special education evaluation, the requirements of the timeline for evaluation must be adhered to. ***Change: No change.***
Several commenters expressed concern that use of SRBI as part of the evaluation of a specific learning disability will delay identification of children as eligible for special education and recommended language that specifically requires districts to process referrals for evaluation notwithstanding the use of general education interventions with a student who is having difficulties in school.	***Discussion:*** The referral section requires the processing of referrals at any time a referral is made. Additional language is not necessary. ***Change***: ***No change.***
One commenter stated language should be added so that any time a PPT meets to consider a referral when an LD is suspected and no progress monitoring data is available, regardless of the reason, a comprehensive evaluation is required.	***Discussion:*** The Department disagrees. When a PPT meets to consider a referral for a student with a possible LD, one of several decisions may be made by the PPT: (1) The PPT may conclude, through an analysis of all existing data, including data on student progress collected through

	the use of appropriate, technically adequate assessments, that a student is making sufficient, adequate progress through SRBI, and that a comprehensive special education evaluation therefore is currently unnecessary; (2) a review of ALL existing data may qualify as comprehensive evaluation required for identification & writing IEP; (3) the PPT may conduct an individually designed comprehensive evaluation (that may include the collection of progress monitoring data); (4) the PPT may determine that a trial diagnostic placement is appropriate as an evaluation (that may include the collection of progress monitoring data); (5) the PPT agrees to extend the evaluation timeline, documented according to the criteria on the Mutual Agreement to Extend Evaluation Timeline for Determining Special Education Eligibility for a Student with a Specific Learning Disability form, ED 637. ***Change***: ***No change.***
One commenter suggested a separate regulation to require boards to inform all parents about general education interventions, especially the SRBI process and in particular, those parents whose children are receiving interventions. The commenter stated: "by creating a separate regulation, the Department will avoid perpetuating the misunderstanding that general education interventions, including SRBI, must first be utilized before a special education referral may be made."	***Discussion:*** A board has a curriculum based on the state standards and is using SRBI all the time for the instruction of its students; it is not a situation where SRBI is implemented after a referral to special education is made. In situations where the PPT decides to move forward with the special education evaluation, a plan to collect data regarding a student's response to scientific research-based interventions targeted toward the child's needs should be included as part of the comprehensive evaluation. The proposed revisions require a board to provide information to parents about the use of interventions in general education that would include information about SRBI, see Section 16 amending Section 10-76d-7. ***Change: No change.***
One commenter recommended adding language that would require the board to provide the parent with information on the scientific, research-based intervention utilized for their child, including copies of articles on the scientific, research-based intervention or materials used, upon request.	***Discussion:*** The documentation required for the eligibility determination of a specific learning disability includes a description of the instructional strategies used and the student-centered data collected such as progress monitoring data and other documentation concerning the use of SRBI in the determination of eligibility. The

	Department declines to require boards to make articles on SRBI available or provide the materials used. The Department has available multiple resources on the Department Web site on SRBI. ***Change: No change.***
One commenter recommended the regulation be amended to require the district to develop a plan that describes the SRBI or other strategies the school intends to employ, the objectives of the instructor, and the dates when those interventions will begin and end. One commenter recommended that school districts be required to notify parents in writing that a child study team is being convened to explore the use of alternative procedures and afford parents a full opportunity to attend and participate and receive documentation as to the alternative procedures and programs. Districts should be required to notify the parents in writing the parent have a right to initiate a referral for special education even though the board is considering or using alternative procedures. The parent should be provided with a copy of a referral form they can complete to start the process.	***Discussion:*** The Department declines to add these provisions to the regulations. The 2010 Guidelines for Identifying Children with Learning Disabilities states the following regarding parental notification: "The school has a distinct responsibility to "inform parents" — for instance, inform them about the procedural safeguards to protect their child's right to special education, the vocabulary of assessment, involvement in a general education intervention process, data collection and its use, and their child's progress and how it is being monitored. . . . During progress monitoring, educators should present data to families in both graphic and numerical formats they can understand easily and should elicit families' views about the student's progress or lack thereof. Data supplied to families should also reference expected grade level benchmarks so parents may better understand where their child's skills are in relation to grade-level expectations," *2010 Guidelines for Identifying Children with Learning Disabilities,* p. 12. For additional information for parents, see *A Family Guide: Connecticut's Framework to RTI* on the Department's Web site. ***Change: No change.***
One commenter stated Section 10-76d-9(b)(2) should be amended to state the use of a measured severe discrepancy between educational performance and intellectual ability "shall not be the sole factor" to determine if child has a learning disability rather than such discrepancy "shall not be utilized" to determine if the child has a learning disability.	***Discussion:*** The IDEA regulations provide the state must not require the use of a severe discrepancy between intellectual ability and educational performance for determining if a child is a child with a specific learning disability. The recommended language does not capture the state prohibition on the use of a severe discrepancy between educational performance and intellectual ability to determine if a child is a child with a learning disability. ***Change: No change.***

One commenter recommended language be added that would allow the provision of special education services during the period of evaluation consistent with case law citing Unified School District No. 1 v. Connecticut Department of Education, et. al., 2001. The point addressed is the state timeline for implementing an IEP, which is 45 school days from the date of referral.	***Discussion:*** The Department disagrees with the analysis. Since the case was decided, the IDEA was revised to require the implementation of a child's current IEP if the child changed school districts. In addition, the parental right to refuse or revoke consent for special education services has been strengthened. It is unlikely the case outcome would be the same under current standards. ***Change: No change.***
Several commenters questioned whether SRBI, as a viable system of intervention, exists in all schools in Connecticut and that if a district did not have a viable SRBI system, it could not be used as part of the evaluation for a specific learning disability. Several commenters stated that if a child has not received SRBI in math or reading, the child should be eligible for a special education evaluation.	***Discussion:*** All school districts have a system of instruction for their students. Access to interventions should be in place for all students who may need that level of support. SRBI is not an action performed when a student is referred for a special education evaluation. It is a more structured way to address the needs of any student who is not benefiting from core instruction and may need more targeted interventions to be successful, whether the student is solely receiving general education or the student is also receiving special education and related services. This more structured approach can better address the IDEA requirement to rule out that a student's learning difficulties are not due to a lack of appropriate instruction. Districts have a decision-making process and early intervention system for students experiencing some difficulty either with behavior or the curriculum. The system of SRBI is a framework that includes these same components but may be more organized and targeted to serve as a prevention measure to catch struggling students early on-early intervention. ***Change: No change.***
Several commenters stated the vast majority of school districts do not have SRBI in place; it is not being implemented with fidelity, is not in place for older students and is not in place for math or writing or other	***Discussion:*** SRBI was implemented in Connecticut starting in 2007 as a general education initiative. When the Executive Summary of the *Guidelines for Identifying Children with Learning* Disabilities went into

areas of a specific learning disability. The commenter quotes an OSEP memorandum indicating districts may not use SRBI for identification of learning disabilities unless it's in place throughout the district. (OSEP 2007 Q&A on RTI and Early Intervening Services, see question F-4).	effect on July 1, 2009, districts that were not implementing SRBI across all schools were given the option to request up to a one-year extension to implement the new LD Guidelines. One of the requirements of the extension was to develop an SRBI implementation plan. Furthermore, the proposed revisions require a board to provide information to parents about the use of interventions in general education that could be used to document a student's response to appropriate instruction, see Section 16 amending Section 10-76d-7. ***Change: No change.***
One commenter stated the section has vague language that gives the evaluator a wide range of choices on eligibility standards. An evaluator can easily manipulate the outcomes of a "state-approved grade level standardized test" by either presenting an easier or more challenging test to qualify or disqualify a student for special education services.	***Discussion:*** Determination of eligibility is not up to the evaluator conducting the evaluation. The PPT, when reviewing all information and data on the child, determines eligibility based on whether the student meets the criteria for a learning disability. Eligibility cannot be based on the results of a single evaluation. It must be based on a comprehensive evaluation that would include, but not be limited to, the tests cited by the commenter. ***Change. No change.***
One commenter stated the language in Subparagraph (C) "explicit and systematic instruction…from a qualified teacher, including documentation of regular assessments of achievement" is subjective in nature and open to interpretation and should be clarified.	***Discussion:*** This language is the definition of "essential components of reading instruction" as defined in the section 1208(3) of the ESEA and has been extended to include math instruction as well. ***Change: No change.***
One commenter stated a concern about students being exited from special education because they did not complete all the tiers of SRBI. Recommendation is made to add language that protects students who have already been identified as needing special education.	***Discussion:*** The guidelines for the identification of students with learning disabilities specifically address this concern. "If it is the consensus of the PPT that the student's gap in learning would re-emerge with the discontinuation of special education services, the student should continue to be identified as being eligible for special education services as a student with a specific learning disability. PPTs should be extremely careful in deciding that a student is no longer eligible for special education services under IDEA because this decision

	has ramifications for accessing support services and accommodations once IDEA eligibility ends. Re-evaluation requires that members of the PPT exercise professional judgment when reviewing all of the evaluation data in light of a student's previous history as well as current progress," 2010 Guidelines for Identifying Children with Learning Disabilities, p. 63. ***Change: No change***
One commenter requested clarification for how child find is to operate in nonpublic schools for children suspected of having a specific learning disability.	***Discussion:*** The Department cannot require nonpublic schools to implement SRBI. It is up to the board to determine how to work with the nonpublic school to obtain the information that is required to evaluate whether a student has a specific learning disability and what information can be used to document that a child's learning difficulties are not the result of a lack of appropriate instruction. ***Change: No change.***
One commenter stated the new eligibility standards for identifying a student with a learning disability are potentially discriminatory against those from poorer communities because "if the child fails to make grade-level progress because the district had an inadequate SRBI program, the child cannot qualify for special education designation and the legal protections, added interventions and accountability that come with a special education designation. So, the draft regulation sentences children with LD in the weakest schools to double punishment: no effective SRBI and no special education services. This is a violation of child find, directly contrary to the intent of both Connecticut and federal special education law and inconsistent with the language of the IDEA. More fundamentally, this policy is immoral."	***Discussion:*** If a review of existing data, including data from an SRBI process, is not sufficient to determine if a student's learning difficulties are not due to a lack of appropriate instruction, the PPT may collect additional data during a comprehensive evaluation process. Although documentation of a student's inadequate response to intervention is required (34 CFR § 300.311(a)(7)), an individually designed comprehensive evaluation must be conducted in order to determine a student's eligibility for special education as a student with a specific learning disability. If there is any question or suspicion that a child may have a learning disability, a comprehensive evaluation must be performed even if the child did not receive appropriate instruction or the district did not provide appropriate interventions through their SRBI process. In addition, as specified in IDEA 2004, families and school personnel always have the right to refer a student for consideration of eligibility for special education services by requesting an evaluation at any time, including prior or during the SRBI process. The PPT must respond to all referrals by holding a PPT meeting to determine whether a comprehensive evaluation is warranted.

	Change: No change.
One commenter recommended language be added to address a district's failure to provide SRBI either prior to or as part of an evaluation or reevaluation shall constitute an inappropriate evaluation, triggering the parent's right to an independent educational evaluation consistent with IDEA.	***Discussion: "***School and district personnel should monitor the fidelity of implementation of curriculums, instruction and interventions. Data on fidelity of implementation relative to the student being referred should be considered during a comprehensive evaluation. . . . As in the case of adequate assessments, when members of the PPT believe that instruction or interventions are problematic, they should consider this information in the evaluation, notify educators involved in the SRBI process of their concerns, and suggest possible improvements. Data derived from appropriate instruction and/or interventions implemented with fidelity by qualified personnel are vital to rule out 'lack of appropriate instruction' as a criterion for students to meet the eligibility requirements for a specific learning disability. However, the lack of such data should not be viewed, in and of itself, as a 'rule-out' that would prohibit an individual student from meeting eligibility criteria as a student with a possible learning disability," *2010 Guidelines for Identifying Children with Learning Disabilities,* p. 49. ***Change: No change.***
Several commenters noted the state criteria for identifying a specific learning disability (SLD) do not contain all the criteria found in Sections 34 CFR 300.307 through 300.309. The criteria set out in the proposed regulations are more restrictive than the criteria set out in federal law. The criteria should be revised to include a specific provision on whether the child exhibits a pattern of strengths and weaknesses in performance, achievement or both, relative to age, state-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a SLD, using appropriate assessments, consistent with Sections 34 CFR 300.304 and 300.305.	***Discussion:*** As stated in IDEA (§ 300.307(a)), each state must adopt criteria for determining whether a child has a specific learning disability. Connecticut elected to use a process based on a child's response to scientific research-based intervention and did not elect to use multiple models. We do not agree that ''and'' should be used instead of ''or'' between § 300.309(a)(2)(i) and (ii), because this would subject the child to two different identification models. We agree that failing a State assessment alone is not sufficient to determine whether a child has an SLD. However, failing a State assessment may be one factor in an evaluation considered by the eligibility group. As required in § 300.304(b)(1), consistent with section 614(b)(2)(A) of the Act, the evaluation must use a variety of assessment tools and strategies to gather relevant information about the child. Further, § 300.304(b)(2), consistent with section 614(b)(2)(B) of the Act, is clear that

	determining eligibility for special education and related services cannot be based on any single measure or assessment as the sole criterion for determining whether a child is a child with a disability. ***Change: No change.***
One commenter stated the regulations should specify the assessment instruments to be used to measure student's responses to intervention and the frequency with which they are to be administered. The regulations should require that diagnostic evaluations be completed within some specified time limits following the initiation of intervention trials.	***Discussion***: The SRBI Framework is a continuum of supports that is part of the general education system and involves multiple tiers of intervention, with increasing intensity and/or **individualization** across tiers. As such the length of time for specific interventions and the assessments used to monitor progress must be determined on a case-by-case basis. ***Change: No change.***
One commenter stated the revised eligibility criteria will potentially deny large numbers of children special education services. There is no research to support the use of an SRBI framework as an evidence-based practice to identify a child with a specific learning disability. The commenter states "If this were the case, it would have been required by federal law when the IDEA was reauthorized in 2004 or it would have been adopted by now as a valid identification procedure by many other states." The commenter goes on to state "putting a working SRBI system in place takes years; SRBI is not fully developed at all grade levels, in every public school all over the state. In order for this to work, all districts must have a fully operational system of SRBI in place before the regulations required the use of SRBI." Several commenters, in opposing the use of SRBI in the identification of children with specific learning disabilities stated children across the state do not achieve adequately for their age, do not meet state-approved grade level standards, and do not make sufficient progress because explicit and differentiated code instruction in reading and evidence based mathematics instruction is almost nonexistent in CTs public schools. Despite an extensive body of research in how trauma impacts neurological development in children, such research does not drive instruction in our public schools. Evidence based instruction is not provided in our schools; the proposed revisions harm middle and high	***Discussion:*** State regulations require that before a student is referred to a PPT, "alternative procedures and programs in regular education shall be explored and, where appropriate, implemented." Documentation of such early intervening services were required on the Multidisciplinary Evaluation Report for students suspected of having a specific learning disability in the 1999 state guidelines to assist in ruling out that a student's difficulties were not due to lack of appropriate instruction in math or reading. However, SRBI, while similar to the implementation of early intervening services, is a much more comprehensive, systemic process used to document a student's response to appropriate instruction and intervention. One way in which data regarding "alternative procedures and programs in regular education" can be obtained is through a district's SRBI/RTI process. Once schools are implementing an effective SRBI/RTI process, referrals most likely will occur after multiple attempts at short-term, well-targeted, research-based interventions have documented a student's inadequate progress in those interventions, with regard both to the level of performance and the rate of growth during interventions. Documentation of inadequate progress also should consider numerous additional factors beyond the individual student's performance and rate of growth, as discussed at length in the *2010 Guidelines for Identifying Children with Learning Disabilities*. Students should not be

school students where reading instruction is often no longer continued. Districts increasingly refuse at PPT meetings to conduct formal assessments in all areas of suspected disability, instead relying on RTI. Children are not being identified, instruction is not specially designed to meet their individualized needs and children graduate without having any skills to compete in the job market or to pursue higher education.	referred to special education simply because they need academic assistance and special education is the only avenue for extra help. Schools should have comprehensive and evidence-based general education practices, differentiation of instruction for all learners, and scientific research-based interventions that provide a continuum of educational opportunities to students as part of the general education program. However, if alternatives within general education have demonstrated minimal results and a team suspects that a student's learning difficulties are not due to a lack of appropriate instruction, the student should be referred for an evaluation to determine eligibility for special education services due to a possible learning disability. Regardless of when in the SRBI process a referral occurs, once a referral is received, the district must convene a PPT to review the referral and decide if an evaluation to determine eligibility for special education services is warranted. The PPT may determine that a comprehensive evaluation is not needed. If parents disagree with this determination, they have the right to challenge it formally in a variety of ways. (*2010 Guidelines for Identifying Children with Learning Disabilities,* p. 22-23) It is well documented that effective general education practices make a difference in student achievement (Juel and Minden-Cupp, 2000; Marzano, Pickering and Pollack, 2001; National Reading Panel, 2000; Reeves, 2002). Well-designed, research-based interventions can improve outcomes greatly for most low achievers (Al Otaiba, 2001; Denton, Fletcher, Anthony, and Francis, 2006; Fuchs, Fuchs and Hollenbeck, 2007; Vellutino and Scanlon, 2002). The 1999 state guidelines recognized the importance of ensuring that students considered for evaluations for possible learning disabilities had adequate instruction and opportunities to learn. These guidelines addressed this issue through a requirement for documentation of early intervening services in the student's area of difficulty (e.g., basic reading, reading comprehension, math calculation, math reasoning). Requirements for early intervening services were extensive and rigorous relative to those of other states at the time. These early

	intervening service requirements were progressive for their time. They also addressed requirements in IDEA 1997 to rule out inappropriate instruction prior to identifying students with disabilities. Unfortunately, however, while early intervening services are vital, they do not address potential problems in core general education practices, such as the use of an inadequate curriculum, ineffective instructional strategies, or inconsistencies in practices across teachers or grades. (*2010 Guidelines for Identifying Children with Learning Disabilities, p. 4)* ***Change: No change.***
One commenter recommends defining the term "sufficient progress." Another commenter recommended adding language to the eligibility criteria found in subparagraph (b) (1)(C) indicating that the child has been provided with research based instruction in reading, math and writing since a Writing Worksheet has been added to the PPTs consideration for a determination of a specific learning disability.	***Discussion:*** Eligibility criteria come from IDEA which only mentions reading and math; these are the two areas for which there is the most research-based instruction. Over time, research-based interventions will be documented in all areas – the research base in the area of writing is increasing annually. ***Change: No change.***
One commenter stated a comprehensive evaluation in all areas of the child's disability should be performed. SRBI should be used after the child is found eligible as an evaluation to see if special education services are effective. One commenter questioned whether the state requires the use of SRBI for identification of other disabilities and if so this should be stated in the regulations.	***Discussion:*** Regardless of the primary disability determination for identification purposes, all areas of suspected disability must be assessed and addressed. In making these kinds of decisions, information about a student's prior history, including her or his progress in academic, behavioral or social-emotional interventions during the SRBI process, is essential. (*2010 Guidelines for Identifying Children with Learning Disabilities,* p. 47.) Although a specific learning disability may certainly occur concomitantly with other disabilities, a student should be identified as having a specific learning disability only when the learning disability is the student's primary problem. In making this decision, the PPT should consider how a student is functioning with respect to the general education curriculum and determine how the disabilities are influencing the student's ability to participate and progress in the general curriculum. Whichever disability is effecting the student's achievement the most would be the primary disability. SRBI can be used to document any student's

	response to appropriate instruction but it is only REQUIRED for the identification of a specific learning disability. ***Change: No change.***
One commenter questions the language in subparagraph (E) of the section which states "the disability must adversely affect the child's educational performance and as a result, the child requires special education to address her or his unique educational needs." The commenter states: "[this section] is dangerously close to a tautological loop that threatens to sabotage the delivery of special education services, if not by intent then by default: a learning disability is defined by a failure to achieve but to be eligible for services the failure to achieve must be proven to be caused by a disability which is not defined in terms of learning strengths and weaknesses."	***Discussion:*** A student may not be found eligible for special education unless the disability adversely affects educational performance and because of that, the child requires special education see the IDEA regulations at 34 CFR Section 300.8. ***Change: No change.***
One commenter objected to allowing a parent to challenge a district's evaluation for gifted and talented.	**Discussion:** It is long standing state policy that a parent has the right to challenge the district's evaluation. This revision formalizes the state policy. ***Change: No change.*** ***Change: A technical correction was made to subsection (a)(1)(D) replacing semicolons with commas and "IQ" was replaced with "intelligence quotient."***
Sec. 19: Section 10-76d-10 Planning and Placement Team.	
One commenter recommended eliminating the language "of children requiring special education" in subsection (b) because children being evaluated do not yet qualify.	***Discussion:*** The language refers to the child find obligation of school districts to locate, identify and evaluate children requiring special education. ***Change: No change.***
One commenter stated the provisions of section 10-76d-10(c) "don't make sense."	***Discussion:*** Subsection (c) describes the responsibility of the PPT for determining whether a child is eligible for special education and related services. ***Change: No change.***

One commenter recommended adding language to the same subsection requiring an evaluation be conducted prior to the discontinuation of special education.	***Discussion:*** IDEA at 34 CFR Section 300.305(e) requires a re-evaluation prior to exiting a child from special education. The proposed revisions incorporate the IDEA requirements. The Department declines to add this provision to the state regulations. ***Change: No change.***
Sec. 20: Section 10-76d-11: IEP. One commenter recommended eliminating the required use of the state IEP form and allow districts to use their own forms.	***Discussion:*** The Department disagrees. The state form contains all of the required federal and state elements. Use of the state form will provide consistency across the state. ***Change: No change.***
One commenter recommended retaining the language which allows review of the IEP upon the request of the parents or personnel working with the child, provided the child's educational performance indicates the needs for review, a list of the individuals who shall implement the IEP, if the child is in residential placement and whether that is for noneducational reasons, and the child's transportation needs. One commenter stated the Connecticut requirements should not be repealed in favor of the IDEA requirements.	***Discussion:*** Under the IDEA, parents or personnel working with the child may request a PPT meeting to review the child's program during the school year. Subsections (b) (4), (b)(7) and (b)(8) contain elements not required by the IDEA. The Department agrees these elements should be retained in the same manner as short term instructional objectives. ***Change: Language shall be included which requires the IEP to list the individuals responsible for implementing the IEP, the type of transportation necessary for the child, and if the child is receiving services in a residential setting, whether the placement is for services other than educational services.***
Multiple commenters requested the Department mandate the use of the Language and Communication plan for children who are deaf or hard of hearing.	***Discussion:*** The Department declines to add a provision not required by IDEA. The plan is available for use as a guideline. ***Change: No change.***
Several commenters requested that transition services be provided to students when the child enters Grade 7 or turns 14, whichever occurs first, not at 16 as the IDEA requires.	***Discussion:*** The Department declines to add this requirement. The IDEA permits consideration of the student's needed transition services and the provision of transition services before the child turns 16. ***Change: No change.***

One commenter recommended students being educated out of state should participate in the CMT/CAPT testing or the equivalent testing of the state where they are attending school.	***Discussion:*** The Department has previously considered this issue. Test administration is critical to maintaining test validity; the state cannot assure this for students placed out of state. If a student is attending public school in another state, the responsible Connecticut school district may make a good faith effort to test the child by either sending someone to the other state to administer the test or bringing the child back to Connecticut to take the test. Whether a child would take another state's test is up to the other state and their determination of who should be counted for purposes of Annual Yearly Progress under No Child Left Behind. ***Change: No change.*** ***Change: A technical correction was made to subsection (c)(8), the comma was eliminated before (4).***
Sec. 21: Section 10-76d-12: Meetings. Several commenters requested that notice of the PPT meeting should be 10 calendar days, not five calendar days.	***Discussion:*** The definition of days as school days is being retained. Therefore, the notice to parents of the PPT meeting will be five school days before the PPT. ***Change: No change.***
Several commenters recommended the inclusion of language requiring a board to make at least three attempts to schedule a PPT meeting so the parent can participate.	***Discussion:*** The Department does not agree with the proposed revision. Each board may determine how many attempts need to be made to ensure parental participation to meet the IDEA requirement of having documented attempts to show parents were encouraged to attend the meeting. ***Change: No change.***
One commenter requested language that would void any decisions made by the PPT if the board has not complied with the IDEA requirements for securing parental participation.	***Discussion:*** The Department does not agree with the proposed revision. Whether a district has been able to secure parental participation for the PPT meeting in accordance with the IDEA is a matter of the specific facts of the case. De minimus procedural violations are not sufficient to invalidate the work of the PPT. ***Change: No change.***

One commenter recommended the first remedy for parental unavailability for the PPT meeting must be to reschedule the meeting. Conference calls or home visits should only be suggested if rescheduling is not possible.	***Discussion:*** The regulation tracks the requirements of the IDEA regarding the use of other alternatives to ensure parental participation in the PPT meeting. ***Change: No change.***
Several commenters addressed the transfer of rights provision. One commenter stated the procedure would be useful, but could be interpreted as the only method by which a parent could act on their child's behalf recommending that language be included that would allow other legally recognized forms of legal authority, such as powers of attorney, to be utilized. One commenter stated the proposed language on the transfer of rights is necessary and long overdue, recommends additional language to address scenarios not covered by the proposed language: (1) when a child does not have the ability to write and (2) when a child is not capable of giving informed consent and recommends use of a modified version of language from Washington State on the transfer of rights at the age of majority. One commenter recommended the transfer of rights to the child at the age of majority should occur unless it's otherwise determined by a court of law the child cannot make informed decisions about their education. One commenter recommended the rights transfer to the student at 18 unless the student executes a document assigning decision making authority to his or her parent, or exercises his or her right to object to the parent's participation. The presumption would then be that parents would be routinely invited to PPT meetings and be given copies of all communications as interested parties unless the competent adult student directs otherwise.	***Discussion:*** The Department agrees that several procedures should be available in the event a student who reaches the age of majority cannot make an informed decision concerning their educational rights. The Department agrees that a modified version of the Washington State provisions dealing with the transfer of educational rights at age 18 is appropriate. ***Change: The proposed revision will be amended to incorporate a modified version of the Washington State procedures for the assignment of an educational decision maker for a student eligible for special education who has not been declared incompetent. The procedures will include notification to both parents and students of the transfer of rights at 18 to the student; allowing the student to notify the board in writing that the parent has the right to continue to make educational decisions for the student ; providing the student with assistance if the student is unable to write or sign by reason of disability or inability to read or write; providing a procedure for a determination if a student is unable to provide informed consent or to make educational decisions without going to court; accepting transfers of authority to another adult to make educational decisions for the student who has reached age 18 such as a power of attorney.***
Several commenters requested language be added to the section requiring the school district to call a special PPT meeting within 14 calendar days of the PPT meeting where the IEP is reviewed, revised or developed in the event the parent receives the IEP and disagrees with the written IEP provided by the district after the initial meeting.	***Discussion:*** The Department declines to add a procedure not required by the IDEA. Adequate protections exist to address this issue. The parent may request the PPT meeting be reconvened or may request amendment of the record if they believe the IEP as written is not correct.

	Change: No change.
Several commenters requested language that would allow parents to tape record PPT meetings.	***Discussion:*** The Department declines to add this additional requirement. The parent's right to tape record PPT meetings has been established by case law in Connecticut. ***Change: No change.*** ***Change: A technical correction was added to subsection (c); the word "is" was substituted for the word "are". A technical correction was added to (g)(2) replacing "it" with "board of education" and in (g)(3) adding "Connecticut General Statutes".***
Former Sec. 22: Section 10-76d-13: Timelines. Multiple commenters objected to the change in the timeline from 45 school days to 90 calendar days and recommended the timeline remain based on school days and not calendar days. Several commenters recommended a date certain in the school year to require completion of evaluations in a calendar day timeline and, if the referral comes in the last 15 school days of the school year, the evaluation would be completed within 30 calendar days of the opening of school the next school year.	***Discussion:*** The Department agrees to retain the timeline at 45 school days. ***Change: The timeline will remain at 45 school days.***
One commenter recommended language be added to set timelines for completing evaluations after the initial evaluation and for implementing revisions to existing IEPs.	***Discussion:*** The Department declines to include requirements not contained in IDEA. ***Change: No change***.
One commenter recommended adding exceptions to the timeline: if the child does not cooperate with the evaluation or if the child moves residency from one district to another.	***Discussion:*** The IDEA contains two exceptions to the IDEA timeline: the parent of the child repeatedly fails or refuses to produce the child for the evaluation or the child enrolls in a school of another public agency after the evaluation time frame has begun. The IDEA evaluation requirements have been incorporated into the state regulations which include the timeline exceptions, see Section 10-76d-10 as revised. ***Change: No change.***

Several commenters recommended the timeline for providing parents a copy of the IEP remain at five school days after the PPT meeting at which it is developed.	***Discussion:*** The Department agrees the IEP should be sent to the parents no later than five school days after the PPT meeting at which it is developed. ***Change: The requirement that the parents be sent the IEP no later than five school days after the PPT meeting at which it is developed will remain.***
Several commenters recommended adopting the IDEA standards for a timeline: 60 calendar days from the date of consent for an evaluation to be completed and 30 calendars days for implementation of the IEP after it is developed. ***AS NOTED ABOVE, THE PROPOSED REVISION TO THE TIMELINE IS BEING REMOVED FROM THE PROPOSED REVISIONS TO THE REGULATIONS. DUE TO THE RETENTION OF THE CURRENT STATE TIMELINE AND THE DEPARTMENT'S DECISION NOT TO INCORPORATE THE OTHER REVISIONS RECOMMENDED BY THE COMMENTERS, SECTION 22 AMENDING SECTION 10-76d-13 IS REMOVED FROM THE PROPOSED REVISIONS. THE SECTIONS FOLLOWING ARE RENUMBERED ACCORDINGLY.***	***Discussion:*** The Department declines to adopt the IDEA timeline standards. The IDEA standards do not address the entirety of the process, from referral to implementation of the IEP. The state requirements do. The Department feels this is an additional state requirement that should be retained. The IDEA does not require implementation of the IEP in 30 calendar days after it's written; the IDEA requires the district to hold a PPT meeting within 30 calendar days of a determination made finding a student eligible for special education to write the IEP, which is to be implemented as soon as possible following the PPT meeting. ***Change: No change.***
Sec. 22: Section 10-76d-14: Program One commenter recommended amending the section to set explicit limits on the practice of diagnostic placements. The commenter stated the practice of diagnostic placement does not allow an evaluator to determine how well a student will succeed when sent back to their local school and reverses the evaluation and planning sequences	***Discussion***: The proposed revisions to the regulations clarify an existing practice and set explicit conditions and requirements for a diagnostic placement. The move to the 40 school day timeline is to allow for vacation days and other days that school might not be in session and disrupt the running of the timeline for the evaluation.

intended by state and federal law; students should not be removed from their everyday learning environment for evaluation. Several commenters recommended leaving the eight week period for the diagnostic evaluation as is.	***Change: No change.***
One commenter objected to the language stating the diagnostic placement is not the child's current placement for purposes of due process where there is a dispute as to the child's placement after the diagnostic placement concludes and stated language should be added to allow students in diagnostic placements before the effective date of the regulations to remain there if a dispute arises; one commenter supported the clarification of this point.	***Discussion:*** A diagnostic placement is an evaluation for purposes of determining the child's current educational placement during due process if a dispute arises, See ***Letter of Finding, Office of Civil Rights, October 23, 1986, West Hartford Board of Education (352 IDELR 300***). If the PPT agrees otherwise, the student's placement may change during the course of due process. ***Change: No change.***
One commenter stated it would be unnecessary to hold periodic meetings during the diagnostic placement if the child is not in school or the parent is not allowing the child to attend such placement. One commenter requested clarification as to whether parental consent is required for the diagnostic placement. One commenter questioned how to reconcile the end of the diagnostic placement, sending out a copy of the IEP developed as a result of the diagnostic placement and providing the parents with prior written notice in a timely fashion before the district proposes or refuses to change the child's identification, evaluation or program or placement.	***Discussion:*** The Department disagrees. If the student is not attending the diagnostic placement, it would be appropriate for the PPT to meet to document such and any other matter relevant to the child's education. The proposed revisions indicate the diagnostic is an evaluation. Consent would be required as per the IDEA. Reverting back to school days as the measure of time will correct the potential problem addressed. ***Change: No change.***
One commenter recommended subsections (c) (early childhood programs), (d) (vocational programs) and (e) approval of school district programs) be retained.	***Discussion:*** Districts are required to provide special education for preschool children eligible for such services and in accordance with the IDEA and Connecticut state statutes and regulations; vocational programs are addressed during planning for secondary transition; the Department reviews programs yearly to complete the federally mandated Annual Performance Report for the provision of special education. These sections are unnecessary. ***Change: No change.***

Sec. 23: Section 10-76d-15: Homebound and Hospitalized Instruction	
One commenter objected to limiting instruction to students enrolled in the public schools.	***Discussion:*** The Department has long taken the position that homebound instruction is only available to students enrolled in the public schools. Educational services are provided for public school students unless there is a specific grant of authority otherwise to provide services to nonpublic school children. Homebound instruction for children enrolled in private schools is not conferred by state statute or regulation. This revision articulates a state standard currently in effect. ***Change: No change.***
Several commenters felt using the term "verified medical reason" would eliminate the provision of instruction to students with psychiatric or psychological issues and recommended the section be amended to clarify that such students would also be able to receive instruction. Several commenters recommended these provisions should apply to children with serious psychiatric or psychological afflictions that prevent the child from attending school and to pregnant students. One commenter stated if the student has been hospitalized in a psychiatric hospital, notification from the hospital should be enough to secure homebound instruction. One commenter stated notes from licensed psychologists and licensed clinical social workers should suffice for students with mental health issues.	***Discussion:*** The proposed revisions do not exclude students with mental health issues from receiving instruction if they are unable to attend school. The student's treating physician would be able to provide appropriate documentation to secure such instruction. In order to clarify this provision, language will be added addressing mental health issues directly. The notification from the hospital should be from the student's treating physician and include the information required for the receipt of instruction. The Department disagrees that notes from a licensed psychologist or licensed clinical social worker should be enough to secure homebound instruction. ***Change: The phrase "which may include mental health issues" will be added at the end of the first sentence in subsection (a). Current subsection (a) will be retained which will allow the provision of services to pregnant students and will be discussed in more detail below.***
One commenter stated requiring the treating physician to submit a form would delay the provision of services and requested that	***Discussion:*** The Department disagrees. Requiring the student's treating physician to document the student's issues serves several purposes:

provision be made allowing the information from the physician to be received in any form, by letter or verbally. Several commenters requested the state develop a form for use in the districts.	first, it assures the student is in fact, being seen by a physician who is addressing the student's medical needs. Second, such documentation provides the district with current information to plan an appropriate program for the student during the time the student is absent from school. The district may determine what information it needs to provide services to students who cannot attend school due to medical reasons. The Department will take the request to develop a state form under advisement. ***Change: No change.***
Several commenters stated only the student's physician or psychologist should be able to determine if the child needs to receive homebound/hospitalized instruction. One commenter questioned whether school health personnel had the authority to make decisions about reasonable accommodations for students with health issues.	***Discussion:*** The Department disagrees. A student's treating physician and school health personnel need to work together to determine the most appropriate setting in which the student should receive instruction during the period of time the student is experiencing health issues. While the treating physician may have a full grasp of the student's health concerns, the school staff has a full grasp of the services available to the student in the school setting, including any accommodations the student may need to be able to attend school during the time the student is experiencing health issues. ***Change: No change.***
One commenter questioned why "school health supervisory personnel" in subsection (a)(1) have the authority to determine a child's need for homebound while in subsection (a)(2) it appears to be a PPT decision for "medically complex" students. One commenter questioned why the student's PPT would determine the need for homebound and not the student's physician.	***Discussion:*** Subsection (a)(1) addresses students who are unable to attend school due to illness; subsection(a)(2) addresses students who are eligible for special education and who are unable to attend school due to illness. In the former, the student is entitled to instruction at home or in the hospital for limited periods of time depending on the student's grade level. The PPT would not be involved in this discussion unless the child was also eligible for special education. In the latter, the student is entitled to a free appropriate public education which goes well beyond the limited instruction stipulated by this regulation. It would be the PPT which decides what the student's program should be. ***Change: No change.***

One commenter stated the definition of "medically complex" in subsection (a)(2) is too restrictive and argued it would exclude children hospitalized frequently for serious treatment by medication or radiation and those who receive treatments on an outpatient basis. The commenter recommended the following language be substituted: "require prolonged or intermittent hospitalizations or ongoing medical treatments or medical devices to compensate for the loss of bodily functions."	***Discussion:*** The Department agrees. ***Change: The word "invasive" will be removed.***
One commenter recommended subsection (a) (1) (A) be revised to require the documentation to go directly to the PPT. One commenter recommended subsection (a) (1) (B) be amended to limit the provision of instruction to students who are medically fragile as that term is defined in this section. Several commenters recommended a revision in subsection (a) (1) (C) to require homebound if the child is absent from school for 10 consecutive school days; one commenter recommended the requirement that homebound be available for students who are absent for short, repeated periods of time be eliminated.	***Discussion:*** The Department disagrees that documentation should go directly to the PPT: if the child is not otherwise in need of special education, no PPT is necessary. In order to clarify when the PPT needs to be convened to consider the provision of homebound, current subsection (a) will be retained. The Department disagrees that homebound should only be available for students who are medically fragile. Any student at any point in their education may experience a serious health concern that will not allow them to attend school. For that student, receiving instruction may be the only activity that provides any continuity or normalcy to the student's life during this time. Students should have the opportunity to continue their education even though they are experiencing serious health issues. The Department agrees with the recommendation that the entitlement to services attaches if the student is going to be out for 10 consecutive days. The Department disagrees with the recommendation to eliminate the entitlement for students who are out for short, repeated periods of time. Students with chronic or acute health problems may not be out for 10 consecutive school days, but may be out repeatedly for short periods of time. These students should receive instructional assistance due to their ongoing health

	problems. The written verification by the student's treating physician and consultation with school health personnel will facilitate planning. ***Change: Current subsection (a) will be retained to clarify when a PPT meeting is necessary.***
One commenter expressed the concern that the language in section (a)(2) allows the parent to self declare the student's needs, rather than having documentation come from the student's physician to the PPT.	***Discussion:*** The Department disagrees. The PPT would be reviewing all information related to the needs of a student with a disability who also is medically complex. School health personnel as well as the student's health care providers would necessarily be appropriate members of the student's PPT and are able to provide documentation to assist in the decision of the PPT. ***Change: No change.***
Several commenters objected to the school district receiving information from the student's treating physician stating the proposed revisions provide no protection of privacy for children with complex medical or mental health needs. One commenter stated the district should be required to obtain parental consent whenever any medical or mental health records are requested to determine a student's educational needs. One commenter stated: parents cannot be forced to consent to allow someone to speak with the doctor as it amounts to a "forfeit of Health Insurance Portability and Accountability Act (HIPAA) rights." One commenter stated parents can be required to consent to the school medical personnel being allowed to speak with the private physician but cannot be forced into disclosing the child's medical records. One commenter stated the consultation piece does not mention that the parent will be required to consent to the release of the child's "medical records" to school personnel. One commenter stated requiring the student's doctor to be in contact with school is too burdensome on student's doctor and this requirement should be deleted.	***Discussion:*** The Department generally disagrees with these comments. First, no information may be secured from a health care provider without the parent first agreeing to the release of information in accordance with the HIPPA requirements as those requirements apply to doctors or health care providers. No school district will be able to receive information without the parent first agreeing to its release according to HIPPA and providing that release to the doctor's or health care provider's office. Second, where a parent is asserting that a student may not attend school due to medical reasons, the district needs information to be able to plan adequate instruction for the child during the period of absence. Third, the provision of information also serves as a check to ensure that the student is in fact, experiencing health issues and is too ill or medically compromised to attend school. ***Change: No change.***

Several commenters objected to the process for resolving disputes contained in subsection (c). One commenter stated if the school medical advisor and treating physician disagreed on the student's need for homebound, the district should not have to provide homebound pending resolution of the dispute and the district should have the ability to review all relevant records and have the child medically evaluated by an appropriately qualified physician to resolve the dispute concerning the necessity for homebound instruction. One commenter recommended language that should a dispute exist, the school district reserves the right to conduct and fully fund an independent medical review for which the parents shall make the child available. Several commenters stated the final decision regarding the student's receipt of homebound instruction should not rest with the school medical advisor, recommended review of the child's needs by an independent practitioner and recommended requiring the parent to make the student available for a medical evaluation by an independent practitioner. One commenter recommended in subsection (c), replace the word "confirm" with "assess".	***Discussion:*** If the school medical advisor or other health professional of the school district and the student's treating physician cannot agree on the provision of homebound instruction, the parent has the right to challenge the refusal to provide such services through due process. The district and the parent may agree to have an independent evaluation conducted to determine the student's need for homebound instruction. The Department disagrees that services should not begin until the dispute is settled. The Department agrees that language should be added to clarify what happens in the event the school health personnel and the student's treating physician disagree on the need for homebound instruction. The Department agrees the word "confirm" should be replaced with the word "assess" to allow for a dialogue to ensue. In addition, language will be added at the end of subsection (c) to clarify the parent or board has the right to request due process or proceed to mediation if the dispute regarding the provision of instruction is not resolved. ***Change: The following language will be added at the end of subsection (c): "If there continues to be a disagreement regarding the provision of homebound instruction, the board may offer at their expense a review of the child's case by a qualified independent medical practitioner. If the parent fails to make the child available for such evaluation, the board's obligation to provide homebound ends. If the child continues to be absent from school, the board must pursue school attendance interventions. The board and parent have the right to request a hearing pursuant to Section 10-76h-3 of the Regulations of Connecticut State Agencies, as amended by section 29, or in lieu of a hearing, may request mediation pursuant to Section 10-76h-5 of the Regulations of Connecticut State Agencies, as amended by section 31, if the dispute regarding the provision of instruction pursuant to this section is not resolved." The word "confirm" will be replaced with the word "assess."***
Several commenters stated homebound instruction is utilized by school districts as a way to resolve disciplinary problems without using	***Discussion:*** The Department disagrees the regulations should be revised to allow the use of homebound instruction in lieu of a school

suspension or expulsion and the regulations should be amended to permit the use of homebound to remove a child from the school environment for a temporary period or deal with a behavioral issue, with the consent of the parents.	district utilizing discipline with a student with a disability. First, no such authorization is necessary. If the PPT, which includes the parent, agrees the student's program should be revised to include instruction out of school for a defined period of time, the PPT may make that change and can provide instruction as determined appropriate by the PPT. Second, the state is required by IDEA to discern whether or not students with disabilities are being disciplined in disproportionate numbers from students who are not disabled. Allowing the use of homebound in lieu of discipline masks the frequency of students with disabilities being removed from school for discipline reasons. ***Change: No change.***
Several commenters requested the regulations be revised to prevent school administrators from providing homebound as an inexpensive alternative to in-school behavioral therapy.	***Discussion:*** The Department declines to add this provision to the regulations. If there is a dispute with the services being provided in the student's IEP, the parents have the right to challenge the services through due process. ***Change: No change.***
Several commenters requested that subsection (e) be revised to clarify tutoring is to be in core academic subjects required for graduation or advancement in the district of residence. Further concerns were expressed about the district being able to provide adequate tutoring for students enrolled in magnet schools and the specialized curriculum of the magnet school. One commenter stated that subsection (e) was unworkable especially in the case of students with social skills goals in their IEPs. One commenter requested the addition of language that would allow services to be provided through online or distance learning.	***Discussion:*** The Department does not fully agree. The Department agrees the continuity of the student's program should be maintained and that necessarily means in the core academic areas required for promotion or graduation. Students in attendance at magnet schools or charter schools, where there is a blended responsibility between the school and the district of residence should receive instruction in core academic subjects that will allow them to advance grades or graduate from the school they are attending. Language will be added to clarify this and to add a requirement the magnet or charter school will cooperate in the provision of instructional materials that will enable the district to provide appropriate instruction to a student who requires homebound instruction. The Department disagrees with the comment regarding the language in subsection (e) related to children with disabilities and implementation of the IEP: it is up to the PPT to determine how to modify the goals and objectives in the child's IEP to

	provide appropriate services during the time the child is too ill to attend school. The regulations as written would allow the provision of instruction through online or distance learning. ***Change: The section will be revised to clarify that "continuity in the general education program" means the student will receive instruction in the core academic subject areas required by the district or magnet or charter school for promotion or graduation and that the magnet or charter school shall cooperate with the district of residence and provide instructional materials that will enable the district to provide appropriate instruction.***
One commenter stated this section needs to be consistent with IDEA and allowing a school district to challenge an assertion the student requires homebound instruction is inconsistent with the IDEA and imposes an undue burden on parents to establish the student's inability to attend school. The proposed revisions should be withdrawn at this time.	***Discussion:*** IDEA does not address the provision of homebound instruction. The provision of homebound instruction for children not otherwise in need of special education and related services is a state requirement. ***Change: No change.***
One commenter requested the regulations require periodic PPTs to review the student's program while on homebound	***Discussion:*** A specific provision is not necessary. Student progress will be monitored through the evaluation of progress towards the goals and objectives of the IEP and either school staff or parents may request a PPT to review the child's program. ***Change: No change.***
One commenter requested the PPT be allowed to provide homebound instruction for a child when it is necessary to that child's academic progress, especially children awaiting placement or revisions to their IEPs.	***Discussion:*** The PPT has the authority to determine what's appropriate under the circumstances articulated. ***Change: No change.***
Several commenters requested if pregnancy is not retained as a category of disability, the homebound regulations should include a provision which would entitle the student to more than simply tutoring in academic subjects.	***Discussion:*** The Department agrees. ***Change: This section will be revised to include a new subsection (f) that will require school districts to provide additional services to pregnant students or students who have just given birth and that***

	such services may include but not be limited to transportation, shortened day, counseling, modified assignments or modified class schedule. ***Change: A technical correction to subsection (d) was made. The word "their" in the sentence beginning with "If there continues to be a disagreement" was replaced with the work "its."***
Sec. 24: Section 10-76d-16: Placement One commenter recommended retaining the current language and its placement priorities.	***Discussion:*** IDEA requires placement as close as possible to the child's home and in the school the child would attend if the child were not disabled, comparable to the current state requirements. ***Change: No change.***
Sec. 25: Section 10-76d-17: Private facilities One commenter stated there is no rule which gives priority to programs operated by regional educational service centers (RESCs); another commenter stated it appeared as though the priority in placement previously eliminated was reinstated. Several commenters stated the requirement that a representative of the private school program should participate in the PPT before the child is placed is too rigid and participation should be left up to the PPT. One commenter stated the "at no cost" provision in subsection (a) (3) has been eliminated and should be reinstated. Several commenters requested the language in subsection (a) (5) be revised to state that participation in extracurricular and nonacademic activities would be a decision of the PPT; one commenter requested	***Discussion:*** RESCs are not afforded priority in placement nor has the priority of placement language been reinstated. ***Change: No change.*** ***Discussion:*** IDEA requires the participation of representatives of private schools prior to the student being placed in a private school program. ***Change: No change.*** ***Discussion:*** This provision has not been eliminated. ***Change: No change.*** ***Discussion:*** The Department agrees the language should be clarified. The PPT should discuss as part of the student's program participation in extracurricular and nonacademic activities especially for students

the provision be eliminated. One commenter requested the phrase "if determined by the PPT to be appropriate" should be added after the word "participates" in subsection (a)(5).	who are not attending public schools. ***Change: Language will be added to the end of (a) (5) as follows: "if the PPT determines it is appropriate for the child to participate."***
One commenter stated subsection (b) is not an accurate statement of the law. A student can be placed in a private special education program for other than educational reasons by the district, not just by the State. A child can be placed in a private special education program by order of a hearing officer, without any further action of the PPT. One commenter stated the language "PPT of the board of education" reflects serious misunderstanding of the nature of the PPT, which belongs to the child.	***Discussion:*** Connecticut does not split the responsibility for placements between educational and noneducational entities allowing the school district to place for other than educational reasons and having a noneducational agency pick up the noneducational costs. If a school district initiates the placement, it is assumed to be for educational reasons and the district must assume the entire cost of the placement. The Department agrees that a hearing officer may order placement in a private school, however this section of the regulations address actions by school districts. The Department disagrees the language "PPT of the board of education" detracts from the PPT being held for the child; the purpose of this section is to state which entity is responsible for developing a student's IEP when that student is placed in a private special education program. ***Change: No change.***
Several commenters requested language be added which would allow parents to observe children in RESCs and public schools and to include observations by others such as independent educational evaluators working on behalf of the parent.	***Discussion:*** This section relates solely to private special education programs. It is not appropriate to include the requested provisions here. The Department declines to add the requested provisions elsewhere. Public school districts have statutory authority to control their school buildings and should establish policies and procedures addressing parental observations as well as observations by independent evaluators and others working on behalf of the parent. Such polices should ensure instructional time for students is not disrupted and allow observations to meet the needs of the parents and school district personnel. ***Change: No change:***
One commenter stated requiring private schools be in existence for one year and to have at least ten students prior to state approval as a	***Discussion:*** The Department disagrees. These are minimal standards which ensure the program is viable.

special education facility is too restrictive.	***Change: No change.***
One commenter requested the requirements in the Florence County v. Carter case regarding the right of parents to receive reimbursement for unilateral placements in nonapproved schools be added to the regulations to make it clear parents have the right to unilaterally place their child where the district has failed to provide an appropriate program and districts have the authority to reimburse parents or directly fund the placement.	***Discussion:*** The Department declines to add this provision to the regulations. This information has been included in the Procedural Safeguards document since the Carter case was decided. ***Change: No change.***
One commenter stated the new provision in subsection (c) (12) singles out one legal requirement to the exclusion of all others and raises an unfortunate implication. A private program cannot intertwine the state in the establishment of religion; it is also the case that private special education programs have to follow civil rights, labor and criminal laws.	***Discussion:*** The Department agrees. ***Change: Subsection (c)(12) will be eliminated.***
One commenter recommended provisions be added to this section that describe placement of a child with disabilities as a two step process, first determination of whether the child can be educated in regular classes with the use of supplementary aids and services and modifications to the curriculum and second, if this is not appropriate, the PPT must place the child with nondisabled children to the maximum extent appropriate.	***Discussion:*** The adoption of the IDEA definition of LRE and incorporation of the IDEA standards for placement achieves this. ***Change: No change.*** ***Change: A correction was made to subsection (e)(2) to provide the State Board of Education with the ability to authorize the Commissioner to act on behalf of the Board rather than granting such authority to the Commissioner outright.***
Sec. 26: Section 10-76d-18: Education Records and reports One commenter recommended language be added which extends these provisions to records relating to children not yet identified as eligible for special education but who have been referred for an evaluation.	***Discussion:*** The Department agrees. ***Change: Language will be added to the introductory section as follows: after the phrase "with disabilities" the words "or children referred for an evaluation to determine eligibility for special***

	education and related services" will be added to clarify the coverage.
One commenter requested retention of the provision that requires district to have written policies and procedures.	***Discussion:*** Districts are required to address confidentiality issues in their policies under IDEA and the Family Educational Rights and Privacy Act (FERPA). This state provision is redundant. ***Change: No change.***
Several commenters requested the timeline for inspection of the records be kept at 10 days and the timeline for review and inspection prior to a PPT meeting or any due process hearing be kept to three days. One commenter requested language be added to this section that would allow such access prior to an expulsion hearing. Several commenters stated the standard "without unnecessary delay" was too vague.	***Discussion:*** The timeline to review and inspect has not been changed from 10 days; keeping the definition of days at school days means the records must be made available within 10 school days of the request to review and inspect. The proposed language related to review and inspection prior to any meeting regarding the IEP or any due process hearings gives the parents and school district more flexibility in arranging this opportunity for the parents to review the files. The Department disagrees the language "without unnecessary delay" is too vague. The Department declines to add language that would allow access to records prior to an expulsion hearing. If the expulsion hearing involves a child eligible for special education, the district must hold a PPT meeting to do a manifestation determination prior to the expulsion hearing. Access to the records would occur at that point. The district's responsibility is to make the records available for inspection after the parent requests such and before any meeting to discuss the IEP or any due process hearing. ***Change: No change.***
One commenter noted section (b) (2) is not changed. The provision is too restrictive and under the fair use doctrine, copyrighted materials may be copied. The language should be amended to permit parents to receive copies of test protocols and interpretive material, but not the test forms themselves. Properly certified experts retained by the parents should have the right to review all information in the possession of the district concerning any test administered, including	***Discussion:*** The Department disagrees. Neither IDEA nor FERPA grants a right to copy a child's educational record unless doing so would deprive the parent of the right to review and inspect the child's record. The right to a copy is a state granted right which can be circumscribed as the state allows. A school district can arrange for the parents' expert to review the child's records upon receipt of written permission from the parent for this to occur.

any answer sheets filled out by the student. One commenter requested this section be amended to add a new provision to require boards of education to adopt policies and procedures which permit the parents or their professional consultants to visit and observe the child' program, observe the student on a reasonable basis in order to allow the parent to participate meaningfully in PPT meetings.	***Change: No change.*** ***Discussion:*** As stated previously, the Department declines to add this provision to the regulations. The board has statutory authority to manage access to school buildings and each board should adopt written policies and procedures to that effect. ***Change: No change.***
Sec. 27: Section 10-76d-19: Transportation One commenter stated school districts are requiring medical documentation for children who need transportation to attend school even though their IEPs require transportation services. Language should be added to the effect that if an IEP includes the provision of transportation services, the school may not require additional documentation separate from and outside of the IEP/PPT process. One commenter requested language be added to allow reimbursement to the parent for a round trip to retrieve the child from the program. Subsection (e) should be clarified to state parents receive reimbursement for the total mileage they incur, not just time child is in the vehicle. Several commenters state the proposed revisions to subsection (e) eliminate a parents' right to challenge transportation services through due process. One commenter stated the language at end of subsection (e) is unnecessary: if a school district offers appropriate transportation, it	***Discussion:*** The Department would expect that if a child needs specialized transportation due to a health concern that information would be reviewed by the PPT to help the PPT plan appropriate and safe transportation services for the child. ***Change: No change:*** ***Discussion:*** The proposed revision provides for this. ***Change: No change.*** ***Discussion:*** This is not correct. The proposed revisions merely state that if a parent provides transportation, reimbursement is allowable only if a hearing officer finds the transportation offered by the district was not appropriate. The parent retains the right to initiate due process over transportation issues. ***Change: No change.*** ***Discussion:*** The Department disagrees. Over the years there has been an expectation raised that if a parent provides transportation even if

has provided FAPE. If the parents disagree, they can take the matter to hearing. Adding this language in relation to transportation raises a negative implication when similar language is not added in relation to programming or related services.	the district offers it, the parent should be reimbursed for such without utilizing due process. The Department feels it's necessary to clarify this. ***Change: No change.***
Sec. 28. Section 10-76h-1. Definitions.	***Discussion***: No comments received. ***Change: No change.***
Sec. 29. Section 10-76h-3. Hearing request; content of hearing request. One commenter stated the deletion of the last sentence in subsection (d) is inappropriate and should be retained. One commenter requested the hearing request be referred to as a "due process complaint" to be consistent with IDEA. One commenter requested the section be revised to allow for a due process complaint filed by a parent who is unrepresented by legal counsel to be amended no later than five days prior to the start of the hearing. One commenter requested retention of the provision which requires a board of education to file for due process if a parent refuses or revokes consent for a private school placement.	***Discussion*:** The Department disagrees. When IDEA was reauthorized in 2004, Congress added a provision which allows parties to a hearing to challenge the content of a hearing request for sufficiency, that is, does the request contain the information required by the IDEA for a hearing request. This provision of the state regulations is contrary to the IDEA provisions. The Department recently revised the Procedural Safeguards Document in consultation with OSEP and was advised to use the phrase "due process hearing" rather than due process complaint. ***Change: No change.*** ***Discussion:*** The Department declines to add a provision not provided for in the IDEA. The IDEA is very specific about the circumstances under which a hearing request can be amended by either party. ***Change: No change.*** ***Discussion:*** The Department declines to reinstate this provision. The state requirement for written parental consent is being proposed for repeal. The provision in this section would need to be repealed for consistency. ***Change. No change.***
Sec. 30. Section 10-76h-4. Statute of limitations.	**Discussion:** The Department declines to add a provision which is not

One commenter requested language which would allow a parent to challenge the actions taken by a school district in the case of continuing violations for the preceding two years without regard to when the continuing violation started.	required under IDEA. Whether continuing violations which occur outside the statute of limitations timeline should be reviewed is a matter of equity for the hearing officer and the courts to decide. ***Change: No change.***
One commenter requested language be added after the phrase "Part B of the IDEA" as follows: "including a copy of the IDEA procedural safeguards".	***Discussion:*** IDEA requires the dissemination of the IDEA procedural safeguards. Whether failure to disclose the procedural safeguards should act as a bar to the statute of limitations is a matter of fact for the hearing officer or court to determine. ***Change: No change.***
Sec. 31. Section 10-76h-5. Mediation.	
Multiple commenters requested the 30 day timeline for scheduling mediations be retained.	***Discussion***: The Department disagrees. The IDEA does not require a timeline for mediations. Mediation is a voluntary activity agreed to by both parties. When the parties are attempting to resolve their issues through the use of mediation, an arbitrary timeline inhibits the ability of the parties to continue settlement discussions. ***Change: No change.***
Several commenters requested the addition of a provision that would require mediation agreements to be reviewed by a hearing officer; the hearing officer would review the record of the case and accept testimony from the parties prior to accepting or rejecting the mediation agreement negotiated by the parties. The hearing officer would maintain jurisdiction over the matter so if the agreement was not implemented, the hearing officer could determine if the agreement was being complied with and order enforcement.	***Discussion:*** The Department declines to add a provision not required by IDEA. The IDEA specifically states at 34 CFR 300.506 regarding mediations that a mediation agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States. This is sufficient to ensure implementation of the mediation agreement. ***Change: No change.***
One commenter recommended the regulations require mediators to be trained, impartial and have an understanding of the special education laws.	***Discussion:*** The IDEA at Section 34 CFR 300.506 contains these requirements. Mediators used by the state receive training, are impartial as defined by the IDEA and have an understanding of the special education laws.

One commenter recommended adding a provision to the regulations that would prohibit parties from including in mediation agreements provisions that require parents to waive their procedural safeguards for the duration of the mediation agreement.	***Discussion:*** The parties to mediation negotiate the components of the mediation agreement which may include waiver provisions. The Department declines to adopt provisions not addressed in the IDEA. ***Change: No change.***
One commenter requested the Department have access to all mediation agreements. If the agreement contains a confidentiality clause, it should not bar parents from seeking enforcement of the agreement from the Department.	***Discussion:*** The confidentiality clause does not, in the opinion of the Department, bar a parent from seeking enforcement of the agreement from the Department to the extent the Department can enforce the agreement. The Department would be able to ensure that any revisions to the IEP are implemented through the complaint resolution process; all other components of the agreement may be enforced through federal or state court. ***Change: No change.***
One commenter requested the Department be allowed to assign a mediator requested by the parties, to the extent practicable, if such a request is made at the time of the mediation request.	***Discussion:*** The IDEA at 34 CFR 300.506 requires mediators be assigned on a random, rotational or other impartial basis. OSEP has taken the position the selection of mediators on an impartial basis would include permitting the parties to the dispute to agree on a mediator. The Department allows this practice. ***Change: No change.***

Sec. 32. Section 10-76h-6. Advisory Opinion.	
One commenter was confused by the proposed revision in this section.	***Discussion:*** The proposed language allows the parties to select a hearing officer for the advisory opinion process rather than the Due Process Unit assigning a hearing officer in rotation. ***Change: No change.***
One commenter requested the hearing officer be allowed to facilitate settlement discussion.	***Discussion:*** The Department declines to allow hearing officers to facilitate settlement discussions. A hearing officer may review, with the parties whether there is a possibility of settlement of the case, but is not allowed to participated in substantive settlement discussions, see Section 10-76h-7 of the regulations. The hearing officer may refer the parties to mediation if the parties wish to engage in settlement negotiations. ***Change: No change***.
Sec. 33. Section 10-76h-7. Appointment of hearing officer. Scheduling of prehearing conference and hearing dates.	
Multiple commenters objected to the language which clarifies the authority of the hearing officer to manage the due process hearing including the number of witnesses and the length of the testimony and cross examination of witnesses and recommended this proposed revision be deleted. One commenter suggested a change to Section 10-76h-8 to allow a motion or hearing before the hearing officer on whether the initial decision to limit a party's witnesses, length of hearing or direct or cross exam was appropriate.	***Discussion:*** The hearing officer is the only individual at the hearing who has authority to manage the conduct of the hearing. Either party may object to rulings made by the hearing officer. Either party may appeal to the federal or state court if they disagree with rulings made by the hearing officer on the number of witnesses allowed or the length of the testimony allowed by the hearing officer during the conduct of the hearing. ***Change: No change.***
Sec. 34. Section 10-76h-8. Motion practice.	***Discussion***: No comments received. ***Change: No change.***
Sec. 35. Section 10-76h-9. Postponements and extensions.	

	Discussion: No comments received. ***Change: No change.***
Sec. 36. Section 10-76h-10. Expedited hearings. One commenter specifically agreed with the proposed revisions indicating the state regulations would now be in compliance with the federal requirements.	**Discussion:** No discussion necessary. ***Change: No change.***
Former Section 38. Section 10-76h-13. Conduct of hearings. One commenter recommended the specific reference removed be reinstated.	***Discussion:*** The Department agrees. The deleted reference to 34 CFR 300.502(e) provides more specificity and will be retained. ***Change: This section will be removed from the proposed revisions. The following sections will be renumbered accordingly.***
Section 10-76h-14. Burden of proof. Several commenters requested the burden of proof be changed to the party who requests the hearing.	***Discussion:*** The Department declines to revise the burden of proof standard. The state legislature has refused for the past three sessions to change the burden of proof standard. ***Change. No change.***
Sec. 37. Section 10-76h-15. Evidence. One commenter asked for clarification on whether all evidence must be submitted before the first day of the hearing or may evidence be submitted during the course of the hearing five days before the scheduled hearing date. One commenter requested language that would establish procedures for telephonic testimony of necessary witnesses for whom travel to the hearing would be unreasonably difficult.	***Discussion:*** The regulations state evidence must be received five days before the scheduled hearing date. This indicates evidence may be submitted before each scheduled hearing date. ***Change: No change.*** ***Discussion:*** Telephonic testimony of witnesses is allowed on a case by case basis by the hearing officers and at the request of the parties and with stipulations to ensure fairness. ***Change: No change.***
Sec. 38. Section 10-76h-16. Decision, implementation, rights of appeal.	

One commenter recommended the regulations be revised to allow the hearing officer to enter consent decrees or settlements between the parties to be reviewed and accepted or rejected as described above in the section on mediation.	***Discussion***: The Department declines to add this provision. Adequate venues exist to seek enforcement if a party to a settlement agreement or consent decrees does not believe such is being implemented. ***Change: No change.***
Sec. 39. Repeal of Section 10-76l-1. Program evaluation. One commenter questioned why this section had been repealed.	***Discussion:*** The statutory provision authorizing this regulation has been repealed since 1981. ***Change: No change.***