



General Assembly

January Session, 2003

Raised Bill No. 6479

LCO No. 3468

Referred to Committee on Education

Introduced by:
(ED)

AN ACT CONCERNING SPECIAL EDUCATION PLACEMENTS.

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

1 Section 1. Section 10-76a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2003*):

3 Whenever used in sections 10-76a to 10-76i, inclusive:

4 (1) "Commissioner" means the Commissioner of Education.

5 (2) "Child" means any person under twenty-one years of age.

6 (3) An "exceptional child" means a child who deviates either
7 intellectually, physically or emotionally so markedly from normally
8 expected growth and development patterns that he or she is or will be
9 unable to progress effectively in a regular school program and needs a
10 special class, special instruction or special services.

11 (4) "Special education" means specially designed instruction
12 developed in accordance with the regulations of the commissioner,
13 subject to approval by the State Board of Education offered at no cost
14 to parents or guardians, to meet the unique needs of a child with a

15 disability, including instruction conducted in the classroom, in the
16 home, in hospitals and institutions, and in other settings and
17 instruction in physical education and special classes, programs or
18 services, including related services, designed to meet the educational
19 needs of exceptional children.

20 (5) ["Children] "A child requiring special education" [includes]
21 means any exceptional child who (A) [has mental retardation, a
22 physical handicap or neurological impairment or who is autistic,
23 traumatically brain injured, seriously emotionally disturbed or
24 suffering an identifiable learning disability which impedes such child's
25 rate of development, which disability is amenable to correction or
26 which rate of development may be improved by special education]
27 meets the criteria for eligibility for special education pursuant to the
28 Individuals with Disabilities Education Act, 20 USC 1400, et seq., as
29 amended from time to time, (B) has extraordinary learning ability or
30 outstanding talent in the creative arts, the development of which
31 requires programs or services beyond the level of those ordinarily
32 provided in regular school programs but which may be provided
33 through special education as part of the public school program, or (C)
34 is age three to five, inclusive, and is experiencing developmental delay
35 that causes such child to require special education.

36 (6) "Developmental delay" means significant delay in one or more of
37 the following areas: (A) Physical development; (B) communication
38 development; (C) cognitive development; (D) social or emotional
39 development; or (E) adaptive development, as measured by
40 appropriate diagnostic instruments and procedures and demonstrated
41 by scores obtained on an appropriate norm-referenced standardized
42 diagnostic instrument.

43 [(7) A "child with mental retardation" is one who has mental
44 retardation, as defined in the Individuals With Disabilities Act, 20 USC
45 1400, et seq., as amended from time to time.

46 (8) A "child with a physical handicap" is one who because of some

47 physical handicap, as defined in regulations adopted by the State
48 Board of Education, requires special educational programs or services.]

49 [(9)] (7) "Related services" means related services, as defined in the
50 Individuals With Disabilities Education Act, 20 USC 1400 et seq., as
51 amended from time to time.

52 [(10)] A "child with a neurological impairment" is one who has a
53 neurological impairment, as defined in regulations adopted by the
54 State Board of Education.

55 (11) A child who is "seriously emotionally disturbed" is one who has
56 a serious emotional disturbance, as defined in the Individuals With
57 Disabilities Education Act, 20 USC 1400, et seq., as amended from time
58 to time.

59 (12) "School age children" are those who have attained the age at
60 which the town must commence to provide educational opportunities
61 pursuant to section 10-186.

62 (13) A child with an "identifiable learning disability" is one who
63 exhibits a severe discrepancy between educational performance and
64 measured intellectual ability and who exhibits a disorder in one or
65 more of the basic psychological processes involved in understanding
66 or in using language, spoken or written, which may manifest itself in a
67 diminished ability to listen, speak, read, write, spell or to do
68 mathematical calculations and does not include a child who has a
69 learning problem that is primarily the result of visual, hearing, motor
70 disabilities, mental retardation, emotional disturbance, environmental,
71 cultural or economic disadvantage.]

72 [(14)] (8) "Extraordinary learning ability" and "outstanding creative
73 talent" shall be defined by regulation by the commissioner, subject to
74 the approval of the State Board of Education, after consideration by
75 said commissioner of the opinions of appropriate specialists and of the
76 normal range of ability and rate of progress of children in the

77 Connecticut public schools.

78 [(15) "Transition services" means a coordinated set of activities for a
79 student, designed within an outcome-oriented process, which
80 promotes movement from school to postschool activities, including
81 postsecondary education, vocational training, integrated employment
82 which may include supported employment, continuing and adult
83 education, adult services, independent living or community
84 participation. The coordinated set of activities is based upon the
85 individual student's needs, taking into account the student's
86 preferences and interests, and includes instruction, community
87 experiences, the development of employment and other postschool
88 adult living objectives, and where appropriate, acquisition of daily
89 living skills and functional vocational evaluation.]

90 Sec. 2. Subdivision (1) of subsection (a) of section 10-76d of the
91 general statutes is repealed and the following is substituted in lieu
92 thereof (*Effective July 1, 2003*):

93 (1) In accordance with the regulations and procedures established
94 by the Commissioner of Education and approved by the State Board of
95 Education, each local or regional board of education shall provide the
96 professional services requisite to identification of [school-age] children
97 requiring special education, identify each such child within its
98 jurisdiction, determine the eligibility of such children for special
99 education pursuant to sections 10-76a to 10-76h, inclusive, prescribe
100 suitable educational programs for eligible children, maintain a record
101 thereof and make such reports as the commissioner may require.

102 Sec. 3. Subdivision (7) of subsection (a) of section 10-76d of the
103 general statutes is repealed and the following is substituted in lieu
104 thereof (*Effective July 1, 2003*):

105 (7) The planning and placement team shall, in accordance with the
106 provisions of the Individuals with Disabilities Education Act, 20 USC
107 1400, et seq., as amended from time to time, develop and update

108 annually a statement of transition service needs [under the applicable
109 components of a student's individualized education program for each
110 student with a disability, beginning at age fourteen, or younger if
111 deemed appropriate by the team. Such statement shall focus on the
112 student's courses of study such as participation in advanced placement
113 courses or a vocational education program. The planning and
114 placement team shall include in the statement for each such student
115 beginning at age sixteen, or younger if deemed appropriate by the
116 team, a provision detailing the transition services needed by the
117 student including, if appropriate, a statement of interagency
118 responsibilities] for each child requiring special education.

119 Sec. 4. Subsection (d) of section 10-76d of the general statutes is
120 repealed and the following is substituted in lieu thereof (*Effective July*
121 *1, 2003*):

122 (d) To meet its obligations under sections 10-76a to [10-76g] 10-76gg,
123 inclusive, any local or regional board of education that is unable to
124 provide necessary programs or services to an eligible child directly
125 may make agreements with another [such board or subject to the
126 consent of the parent or guardian of any child affected thereby, make
127 agreements with any private school or with any public or private
128 agency or institution, including a group home to provide the necessary
129 programs or services, but no expenditures made pursuant to a contract
130 with a private school, agency or institution for such special education
131 shall be paid under the provisions of section 10-76g, unless (1) such
132 contract includes a description of the educational program and other
133 treatment the child is to receive, a statement of minimal goals and
134 objectives which it is anticipated such child will achieve and an
135 estimated time schedule for returning the child to the community or
136 transferring such child to another appropriate facility, (2) subject to the
137 provisions of this subsection, the educational needs of the child for
138 whom such special education is being provided cannot be met by
139 public school arrangements in the opinion of the commissioner who,
140 before granting approval of such contract for purposes of payment,

141 shall consider such factors as the particular needs of the child, the
142 suitability and efficacy of the program offered by such private school,
143 agency or institution, and the economic feasibility of comparable
144 alternatives, and (3) commencing with the 1987-1988 school year and
145 for each school year thereafter, each such private school, agency or
146 institution has been approved for special education by the
147 Commissioner of Education or by the appropriate agency for facilities
148 located out of state, except as provided in subsection (b) of this section.
149 Notwithstanding the provisions of subdivision (2) of this subsection or
150 any regulations adopted by the State Board of Education setting
151 placement priorities, placements pursuant to this section and
152 payments under section 10-76g may be made pursuant to such a
153 contract if the public arrangements are more costly than the private
154 school, institution or agency, provided the private school, institution or
155 agency meets the educational needs of the child and its program is
156 suitable and efficacious. Notwithstanding the provisions of this
157 subsection to the contrary, nothing in this subsection shall (A) require
158 the removal of a child from a nonapproved facility if the child was
159 placed there prior to July 7, 1987, pursuant to the determination of a
160 planning and placement team that such a placement was appropriate
161 and such placement was approved by the Commissioner of Education,
162 or (B) prohibit the placement of a child at a nonapproved facility if a
163 planning and placement team determines prior to July 7, 1987, that the
164 child be placed in a nonapproved facility for the 1987-1988 school year.
165 Each child placed in a nonapproved facility as described in
166 subparagraphs (A) and (B) of subdivision (3) of this subsection may
167 continue at the facility provided the planning and placement team or
168 hearing officer appointed pursuant to section 10-76h determines that
169 the placement is appropriate. Expenditures incurred by any local or
170 regional board of education to maintain children in nonapproved
171 facilities as described in said subparagraphs (A) and (B) shall be paid
172 pursuant to the provisions of section 10-76g. Any local or regional
173 board of education may enter into a contract with] entity for the
174 provision of such services in accordance with this subsection. The

175 board may make agreements with (1) any other public agency,
176 including another such board or a regional educational service center,
177 (2) any private special education program approved by the
178 Commissioner of Education, (3) any facility for the provision of
179 residential services, including group home services, licensed by the
180 appropriate state agency, (4) the owners or operators of any sheltered
181 workshop or rehabilitation center for provision of an education
182 occupational training program for [children requiring special
183 education who are] a child who requires special education and who is
184 at least sixteen years of age, provided such workshop or institution
185 [shall have been] is approved by the appropriate state agency, [.
186 Whenever any child is identified by a local or regional board of
187 education as a child requiring special education and said board of
188 education determines that the requirements for special education
189 could be met by a program provided within the district or by
190 agreement with another board of education except for the child's need
191 for services other than educational services such as medical,
192 psychiatric or institutional care or services, said board may meet its
193 obligation to furnish special education for such child by paying the
194 reasonable cost of special education instruction in a private school,
195 hospital or other institution provided said board or the commissioner
196 concurs that placement in such institution is necessary and proper and
197 no state institution is available to meet such child's needs] (5) any
198 private agency or individual for the provision of services other than
199 instructional services, provided the agency or individual meets any
200 requirements for the provision of such services established pursuant to
201 the general statutes or any regulation adopted in accordance with
202 chapter 54, and (6) any private special education program that is not
203 approved by the Commissioner of Education, including, but not
204 limited to, any program or facility located outside this state, if prior to
205 any such agreement with such program, the commissioner determines
206 that (A) the program is appropriate for the child, and (B) no other
207 program approved by the commissioner is appropriate for the child
208 and available to provide the necessary services to the child. Any

209 agreement made in accordance with this subsection shall be subject to
210 the consent of the parent or guardian of the child if such consent is
211 required by any state or federal statute or regulation.

212 Sec. 5. Subdivision (1) of subsection (a) of section 10-76h of the
213 general statutes is repealed and the following is substituted in lieu
214 thereof (*Effective July 1, 2003*):

215 (1) A parent or guardian of a child requiring special education and
216 related services pursuant to sections 10-76a to 10-76g, inclusive, a pupil
217 if such pupil is an emancipated minor or eighteen years of age or older
218 requiring such services, a surrogate parent appointed pursuant to
219 section 10-94g, or the Commissioner of Children and Families, or a
220 designee of said commissioner, on behalf of any such child in the
221 custody of said commissioner, may request, in writing, a hearing of the
222 local or regional board of education or the unified school district
223 responsible for providing such services whenever such board or
224 district proposes or refuses to initiate or change the identification,
225 evaluation or educational placement of or the provision of a free
226 appropriate public education to such child or pupil, provided no issue
227 may be raised at such hearing unless it was raised at a planning and
228 placement team meeting for such child or pupil and provided further,
229 nothing in this subsection shall be construed to limit the right of such
230 parent, guardian, emancipated minor or surrogate parent to initiate a
231 planning and placement team meeting at any time. The local or
232 regional board of education or the unified school district shall, not later
233 than seven calendar days after receipt of a request for a hearing, notify
234 the state Department of Education of such request. The local or
235 regional board of education or the unified school district responsible
236 for providing special education and related services for a child or pupil
237 requiring such services under sections 10-76a to 10-76g, inclusive, may
238 request, upon written notice to the parent or guardian of such child,
239 the pupil if such pupil is an emancipated minor or is eighteen years of
240 age or older, the surrogate parent appointed pursuant to section 10-
241 94g, or the Commissioner of Children and Families, or a designee of

242 said commissioner, on behalf of any such child or pupil in the custody
243 of said commissioner, a hearing concerning the decision of the
244 planning and placement team established pursuant to section 10-76d,
245 whenever such board or district proposes or refuses to initiate or
246 change the identification, evaluation or educational placement of or
247 the provision of a free appropriate public education placement to such
248 child or pupil, including, but not limited to, refusal of the parent or
249 guardian, pupil if such pupil is an emancipated minor or is eighteen
250 years of age or older or the surrogate parent appointed pursuant to
251 section 10-94g, to give consent for [preplacement] initial evaluation or
252 [initial placement in special education] reevaluation or the withdrawal
253 of such consent, provided no issue may be raised at such hearing
254 unless it was raised at a planning and placement team meeting for
255 such child or pupil and provided further, nothing in this subsection
256 shall be construed to limit the right of such board or district to initiate
257 a planning and placement team meeting. In the event a planning and
258 placement team proposes private placement for a child or pupil who
259 requires or may require special education and related services and the
260 parent, guardian, pupil if such pupil is an emancipated minor or is
261 eighteen years of age or older or surrogate parent appointed pursuant
262 to section 10-94g withholds or revokes consent for such placement, the
263 local or regional board of education shall request a hearing in
264 accordance with this section and may request mediation pursuant to
265 subsection (f) of this section. For purposes of this section, a "local or
266 regional board of education or unified school district" includes any
267 public agency which is responsible for the provision of special
268 education and related services to children requiring special education
269 and related services.

270 Sec. 6. Subdivision (2) of subsection (c) of section 10-76h of the
271 general statutes is repealed and the following is substituted in lieu
272 thereof (*Effective July 1, 2003*):

273 (2) Both parties shall participate in a prehearing conference [, at least
274 ten days prior to the date the hearing is scheduled to commence,] to

275 resolve the issues in dispute, if possible and narrow the scope of the
276 issues. Each party to the hearing shall disclose, not later than five
277 business days prior to the date the hearing commences, (A)
278 documentary evidence such party plans to present at the hearing and a
279 list of witnesses such party plans to call at the hearing, and (B) all
280 completed evaluations and recommendations based on the offering
281 party's evaluations that the party intends to use at the hearing. Except
282 for good cause shown, the hearing officer shall limit each party to such
283 documentary evidence and witnesses as were properly disclosed and
284 are relevant to the issues in dispute. A hearing officer may bar any
285 party who fails to comply with the requirements concerning disclosure
286 of evaluations and recommendations from introducing any
287 undisclosed evaluation or recommendation at the hearing without the
288 consent of the other party.

289 Sec. 7. Subsection (d) of section 10-76h of the general statutes is
290 repealed and the following is substituted in lieu thereof (*Effective July*
291 *1, 2003*):

292 (d) (1) The hearing officer or board shall have the authority to
293 confirm, modify, or reject the identification, evaluation or educational
294 placement of or the provision of a free appropriate public education to
295 the child or pupil, to determine the appropriateness of an educational
296 placement where the parent or guardian of a child requiring special
297 education or the pupil if such pupil is an emancipated minor or
298 eighteen years of age or older, has placed the child or pupil in a
299 program other than that prescribed by the planning and placement
300 team, or to prescribe alternate special educational programs for the
301 child or pupil. In the case where a parent or guardian, or pupil if such
302 pupil is an emancipated minor or is eighteen years of age or older, or a
303 surrogate parent appointed pursuant to section 10-94g, has refused
304 consent for initial evaluation or [placement in special education]
305 reevaluation, the hearing officer or board may order [special education
306 evaluation or placement] an initial evaluation or reevaluation without
307 the consent of such parent, guardian, pupil or surrogate parent except

308 that if the parent, guardian, pupil or surrogate parent appeals such
309 decision pursuant to subdivision (4) of this subsection, the child or
310 pupil may not be evaluated or placed pending the disposition of the
311 appeal. The hearing officer or board shall inform the parent or
312 guardian, or the emancipated minor or pupil eighteen years of age or
313 older, or the surrogate parent appointed pursuant to section 10-94g, or
314 the Commissioner of Children and Families, as the case may be, and
315 the board of education of the school district or the unified school
316 district of the decision in writing and mail such decision within forty-
317 five days after receipt by the board of the request for a hearing made in
318 accordance with the provisions of subsection (a) of this section except
319 that a hearing officer or board may grant specific extensions of such
320 forty-five-day period in order to comply with the provisions of
321 subsection (b) of this section. The hearing officer may include in his
322 decision a comment on the conduct of the proceedings. The findings of
323 fact, conclusions of law and decision shall be written without
324 personally identifiable information concerning such child or pupil, so
325 that such decisions may be available for public inspections pursuant to
326 sections 4-167 and 4-180a.

327 (2) If the local or regional board of education or the unified school
328 district responsible for providing special education for such child or
329 pupil requiring special education does not take action on the findings
330 or prescription of the hearing officer or board within fifteen days after
331 receipt thereof, the State Board of Education shall take appropriate
332 action to enforce the findings or prescriptions of the hearing officer or
333 board. Such action may include application to the Superior Court for
334 injunctive relief to compel such local or regional board or school
335 district to implement the findings or prescription of the hearing officer
336 or board without the necessity of establishing irreparable harm or
337 inadequate remedy at law.

338 (3) If the hearing officer or board upholds the local or regional board
339 of education or the unified school district responsible for providing
340 special education and related services for such child or pupil who

341 requires or may require special education on the issue of evaluation,
342 reevaluation or placement in a private school or facility, such board or
343 district may evaluate or provide such services to the child or pupil
344 without the consent of the parent or guardian, pupil if such pupil is an
345 emancipated minor or is eighteen years of age or older, or the
346 surrogate parent appointed pursuant to section 10-94g, subject to an
347 appeal pursuant to subdivision (4) of this subsection.

348 (4) Appeals from the decision of the hearing officer or board shall be
349 taken in the manner set forth in section 4-183, except, upon application
350 made to the court to present evidence at the hearing on such appeal,
351 the court, after reviewing the record of the proceedings of the hearing
352 officer or board, may grant such application if, after a hearing and the
353 presentation of oral argument on such application, the court finds (A)
354 that the record does not contain a complete transcript of the entire
355 proceedings and of the evidence presented before said hearing officer
356 or board, or (B) that the taking of evidence is necessary for the
357 equitable disposition of the appeal, or (C) probable cause to believe
358 that reliable, probative and substantial evidence was overlooked or
359 ignored by the findings and conclusions of said hearing officer or
360 board. Notwithstanding the provisions of section 4-183, such appeal
361 shall be taken to the judicial district wherein the child or pupil resides.
362 In the event of an appeal, upon request and at the expense of the State
363 Board of Education, said board shall supply a copy of the transcript of
364 the formal sessions of the hearing officer or board to the parent or
365 guardian or the emancipated minor or pupil eighteen years of age or
366 older or surrogate parent or said commissioner and to the board of
367 education of the school district or the unified school district.

368 Sec. 8. Section 10-253 of the general statutes is amended by adding
369 subsection (f) as follows (*Effective July 1, 2003*):

370 (NEW) (f) Notwithstanding any provision of the general statutes,
371 educational services shall be provided by each local and regional
372 board of education to homeless children and youths in accordance

373 with the provisions of the McKinney-Vento Homeless Assistance Act,
374 42 USC 11431, et seq., as amended from time to time.

This act shall take effect as follows:	
Section 1	<i>July 1, 2003</i>
Sec. 2	<i>July 1, 2003</i>
Sec. 3	<i>July 1, 2003</i>
Sec. 4	<i>July 1, 2003</i>
Sec. 5	<i>July 1, 2003</i>
Sec. 6	<i>July 1, 2003</i>
Sec. 7	<i>July 1, 2003</i>
Sec. 8	<i>July 1, 2003</i>

Statement of Purpose:

To make statutes consistent with federal law, to eliminate language duplicated in the IDEA, to clarify that boards of education can make placements in private facilities providing special education only if the facility is approved by the Commissioner of Education and to repeal the requirement that the prehearing conference be held at least ten days prior to the date the due process hearing is scheduled to commence.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]