



General Assembly

February Session, 2016

***Raised Bill No. 5552***

LCO No. 2608



Referred to Committee on EDUCATION

Introduced by:  
(ED)

***AN ACT CONCERNING SPECIAL EDUCATION.***

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

1 Section 1. Section 10-76h of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2016*):

3 (a) (1) A parent or guardian of a child requiring special education  
4 and related services pursuant to sections 10-76a to 10-76g, inclusive, a  
5 pupil if such pupil is an emancipated minor or eighteen years of age or  
6 older requiring such services, a surrogate parent appointed pursuant  
7 to section 10-94g, or the Commissioner of Children and Families, or a  
8 designee of said commissioner, on behalf of any such child in the  
9 custody of said commissioner, may, after participating in the  
10 adjudicative process provided in subsection (f) of this section, request  
11 a hearing of the local or regional board of education or the unified  
12 school district responsible for providing such services whenever such  
13 board or district proposes or refuses to initiate or change the  
14 identification, evaluation or educational placement of or the provision  
15 of a free appropriate public education to such child or pupil. Such  
16 request shall be made by sending a written request to such board or

17 district with a copy to the Department of Education.

18 (2) The local or regional board of education or the unified school  
19 district responsible for providing special education and related  
20 services for a child or pupil requiring such services under sections 10-  
21 76a to 10-76g, inclusive, may request, upon written notice to the parent  
22 or guardian of such child, the pupil if such pupil is an emancipated  
23 minor or is eighteen years of age or older, the surrogate parent  
24 appointed pursuant to section 10-94g, or the Commissioner of  
25 Children and Families, or a designee of said commissioner, on behalf  
26 of any such child or pupil in the custody of said commissioner, a  
27 hearing concerning the decision of the planning and placement team  
28 established pursuant to section 10-76d, whenever such board or  
29 district proposes or refuses to initiate or change the identification,  
30 evaluation or educational placement of or the provision of a free  
31 appropriate public education placement to such child or pupil,  
32 including, but not limited to, refusal of the parent or guardian, pupil if  
33 such pupil is an emancipated minor or is eighteen years of age or older  
34 or the surrogate parent appointed pursuant to section 10-94g, to give  
35 consent for initial evaluation or reevaluation or the withdrawal of such  
36 consent. The local or regional board of education or unified school  
37 district shall provide a copy of the request to the Department of  
38 Education. In the event a planning and placement team proposes  
39 private placement for a child or pupil who requires or may require  
40 special education and related services and the parent, guardian, pupil  
41 if such pupil is an emancipated minor or is eighteen years of age or  
42 older or surrogate parent appointed pursuant to section 10-94g  
43 withholds or revokes consent for such placement, the local or regional  
44 board of education shall request a hearing in accordance with this  
45 section and may request mediation pursuant to subsection [(f)] (g) of  
46 this section, provided such action may be taken only in the event such  
47 parent, guardian, pupil or surrogate parent has consented to the initial  
48 receipt of special education and related services and subsequent to the  
49 initial placement of the child, the local or regional board of education

50 seeks a private placement. For purposes of this section, a "local or  
51 regional board of education or unified school district" includes any  
52 public agency which is responsible for the provision of special  
53 education and related services to children requiring special education  
54 and related services.

55 (3) The request for a hearing shall contain a statement of the specific  
56 issues in dispute.

57 (4) A party shall have two years to request a hearing from the time  
58 the board of education proposed or refused to initiate or change the  
59 identification, evaluation or educational placement or the provision of  
60 a free appropriate public education placement to such child or pupil  
61 provided, if the parent, guardian, pupil or surrogate parent is not  
62 given notice of the procedural safeguards, in accordance with  
63 regulations adopted by the State Board of Education, including notice  
64 of the limitations contained in this section, such two-year limitation  
65 shall be calculated from the time notice of the safeguards is properly  
66 given.

67 (b) Upon receipt of a written request for a special education hearing  
68 made in accordance with subsection (a) of this section, the Department  
69 of Education shall appoint an impartial hearing officer who shall  
70 schedule a hearing which shall be held and the decision written and  
71 mailed not later than forty-five days after the commencement of the  
72 hearing pursuant to the Individuals with Disabilities Education Act, 20  
73 USC 1400 et seq., as amended from time to time. An extension of the  
74 forty-five-day time limit may be granted by the hearing officer at the  
75 request of either party to the hearing.

76 (c) (1) The Department of Education shall provide training to  
77 hearing officers in administrative hearing procedures, including due  
78 process, and in the special educational needs of children. Hearing  
79 officers and members of hearing boards shall not be employees of the  
80 Department of Education or any local or regional board of education,

81 unified school district or public agency involved in the education or  
82 care of the child. A person who is paid to serve as a hearing officer is  
83 not deemed to be an employee of the Department of Education. No  
84 person who participated in the previous identification, evaluation or  
85 educational placement of or the provision of a free appropriate public  
86 education to the child or pupil nor any member of the board of  
87 education of the school district under review, shall be a hearing officer  
88 or a member of a hearing board.

89 (2) Both parties shall participate in a prehearing conference to  
90 resolve the issues in dispute, if possible and narrow the scope of the  
91 issues. Each party to the hearing shall disclose, not later than five  
92 business days prior to the date the hearing commences, (A)  
93 documentary evidence such party plans to present at the hearing and a  
94 list of witnesses such party plans to call at the hearing, and (B) all  
95 completed evaluations and recommendations based on the offering  
96 party's evaluations that the party intends to use at the hearing. Except  
97 for good cause shown, the hearing officer shall limit each party to such  
98 documentary evidence and witnesses as were properly disclosed and  
99 are relevant to the issues in dispute. A hearing officer may bar any  
100 party who fails to comply with the requirements concerning disclosure  
101 of evaluations and recommendations from introducing any  
102 undisclosed evaluation or recommendation at the hearing without the  
103 consent of the other party.

104 (3) The hearing officer or board shall hear testimony relevant to the  
105 issues in dispute offered by the party requesting the hearing and any  
106 other party directly involved, and may hear any additional testimony  
107 the hearing officer or board deems relevant. The hearing officer or  
108 board may require a complete and independent evaluation or  
109 prescription of educational programs by qualified persons, the cost of  
110 which shall be paid by the board of education or the unified school  
111 district. The hearing officer or board shall cause all formal sessions of  
112 the hearing and review to be recorded in order to provide a verbatim  
113 record.

114 (d) (1) The hearing officer or board shall have the authority (A) to  
115 confirm, modify, or reject the identification, evaluation or educational  
116 placement of or the provision of a free appropriate public education to  
117 the child or pupil, (B) to determine the appropriateness of an  
118 educational placement where the parent or guardian of a child  
119 requiring special education or the pupil if such pupil is an  
120 emancipated minor or eighteen years of age or older, has placed the  
121 child or pupil in a program other than that prescribed by the planning  
122 and placement team, or (C) to prescribe alternate special educational  
123 programs for the child or pupil. If the parent or guardian of such a  
124 child who previously received special education and related services  
125 from the district enrolls the child, or the pupil who previously received  
126 special education and related services from the district enrolls in a  
127 private elementary or secondary school without the consent of or  
128 referral by the district, a hearing officer may, in accordance with the  
129 Individuals with Disabilities Education Act, 20 USC 1400 et seq., as  
130 amended from time to time, require the district to reimburse the  
131 parents or the pupil for the cost of that enrollment if the hearing officer  
132 finds that the district had not made a free appropriate public education  
133 available to the child or pupil in a timely manner prior to that  
134 enrollment. In the case where a parent or guardian, or pupil if such  
135 pupil is an emancipated minor or is eighteen years of age or older, or a  
136 surrogate parent appointed pursuant to section 10-94g, has refused  
137 consent for initial evaluation or reevaluation, the hearing officer or  
138 board may order an initial evaluation or reevaluation without the  
139 consent of such parent, guardian, pupil or surrogate parent except that  
140 if the parent, guardian, pupil or surrogate parent appeals such decision  
141 pursuant to subdivision (4) of this subsection, the child or pupil may  
142 not be evaluated or placed pending the disposition of the appeal. The  
143 hearing officer or board shall inform the parent or guardian, or the  
144 emancipated minor or pupil eighteen years of age or older, or the  
145 surrogate parent appointed pursuant to section 10-94g, or the  
146 Commissioner of Children and Families, as the case may be, and the  
147 board of education of the school district or the unified school district of

148 the decision in writing and mail such decision not later than forty-five  
149 days after the commencement of the hearing pursuant to the  
150 Individuals with Disabilities Education Act, 20 USC 1400 et seq., as  
151 amended from time to time, except that a hearing officer or board may  
152 grant specific extensions of such forty-five-day period in order to  
153 comply with the provisions of subsection (b) of this section. The  
154 hearing officer may include in the decision a comment on the conduct  
155 of the proceedings. The findings of fact, conclusions of law and  
156 decision shall be written without personally identifiable information  
157 concerning such child or pupil, so that such decisions may be available  
158 for public inspections pursuant to sections 4-167 and 4-180a.

159 (2) If the local or regional board of education or the unified school  
160 district responsible for providing special education for such child or  
161 pupil requiring special education does not take action on the findings  
162 or prescription of the hearing officer or board within fifteen days after  
163 receipt thereof, the State Board of Education shall take appropriate  
164 action to enforce the findings or prescriptions of the hearing officer or  
165 board. Such action may include application to the Superior Court for  
166 injunctive relief to compel such local or regional board or school  
167 district to implement the findings or prescription of the hearing officer  
168 or board without the necessity of establishing irreparable harm or  
169 inadequate remedy at law.

170 (3) If the hearing officer or board upholds the local or regional board  
171 of education or the unified school district responsible for providing  
172 special education and related services for such child or pupil who  
173 requires or may require special education on the issue of evaluation,  
174 reevaluation or placement in a private school or facility, such board or  
175 district may evaluate or provide such services to the child or pupil  
176 without the consent of the parent or guardian, pupil if such pupil is an  
177 emancipated minor or is eighteen years of age or older, or the  
178 surrogate parent appointed pursuant to section 10-94g, subject to an  
179 appeal pursuant to subdivision (4) of this subsection.

180 (4) Appeals from the decision of the hearing officer or board shall be  
181 taken in the manner set forth in section 4-183, except the court shall  
182 hear additional evidence at the request of a party. Notwithstanding the  
183 provisions of section 4-183, such appeal shall be taken to the judicial  
184 district wherein the child or pupil resides. In the event of an appeal,  
185 upon request and at the expense of the State Board of Education, said  
186 board shall supply a copy of the transcript of the formal sessions of the  
187 hearing officer or board to the parent or guardian or the emancipated  
188 minor or pupil eighteen years of age or older or surrogate parent or  
189 said commissioner and to the board of education of the school district  
190 or the unified school district.

191 (e) Hearing officers and members of the hearing board shall be paid  
192 reasonable fees and expenses as established by the State Board of  
193 Education.

194 (f) Prior to requesting a hearing pursuant to subsection (a) of this  
195 section, the parties shall participate in an adjudication conducted by an  
196 impartial third-party adjudicator, who shall be chosen by both parties  
197 and who shall have significant experience and expertise in the fields  
198 and areas significant to the review of the special educational needs of  
199 the child or pupil. If the parties cannot agree on an adjudicator, the  
200 Commissioner of Education shall select the adjudicator for purposes of  
201 conducting an adjudication under this subsection. An adjudication  
202 shall be conducted in not more than two days. The adjudicator shall  
203 issue findings of fact and make a formal recommendation regarding  
204 the appropriate identification, evaluation or educational placement of  
205 or the provision of a free appropriate public education to such child.  
206 The parties may accept or reject the findings and recommendation of  
207 the adjudicator. If either party rejects the recommendation of the  
208 adjudicator, either party may elect to proceed to a hearing pursuant to  
209 subsection (a) of this section. In any such hearing, the findings of fact  
210 and recommendation of the adjudicator shall be available to the  
211 hearing officer and shall become part of the record of the hearing.

212        ~~[(f)]~~ (g) (1) In lieu of proceeding directly to a hearing, pursuant to  
213 subsection (a) of this section, the parties may agree in writing to  
214 request the Commissioner of Education to appoint a state mediator.  
215 Upon the receipt of a written request for mediation, signed by both  
216 parties, the commissioner shall appoint a mediator knowledgeable in  
217 the fields and areas significant to the review of the special educational  
218 needs of the child or pupil. The mediator shall attempt to resolve the  
219 issues in a manner which is acceptable to the parties. The mediator  
220 shall certify in writing to the Department of Education and to the  
221 parties whether the mediation was successful or unsuccessful.

222        (2) If the dispute is not resolved through mediation, either party  
223 may proceed to a hearing.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2016</i>	10-76h

***Statement of Purpose:***

To require parties to participate in an adjudication conducted by an impartial third-party adjudicator before conducting a special education hearing.

*[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.]*