



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

THE ASSISTANT SECRETARY

MAR 24, 2003

Honorable Theodore S. Sergi
Commissioner of Education
Connecticut State Board of Education
P.O. Box 2219
Hartford, Connecticut 06145

Dear Commissioner Sergi:

I am writing in response to your letter dated January 13, 2003, regarding Connecticut's Eligibility Documents and the Special Conditions attached to the federal Fiscal Year (FY) 2002 grant award under Part B of the Individuals with Disabilities Education Act (IDEA). In order to ensure consistency for all States with Special Conditions regarding State and district-wide assessment and alternate assessment reporting, your October 29, 2002 submission regarding your Special Conditions on Biennial Performance Reporting is being addressed under separate cover. I appreciate your statement in your January 13 letter that the State is pleased with the conditional approval of your application for federal funds under this program and that it is your intent "to take whatever actions may be necessary" to ensure consistency of your State's process with the requirements of the IDEA.

As you are aware, it is the Department's position that Connecticut's prohibition of raising an issue in a due process hearing unless it was previously raised at a meeting of the planning and placement team (PPT) is inconsistent with the requirements of Part B. That is, the Department determined that R.C.S.A. Section 10-76h-3 is not consistent with the provisions of the IDEA that guarantee parents' right to a timely due process hearing on any matter related to the identification, evaluation or educational placement of a child with a disability or the provision of a free appropriate public education to that child. As part of the Special Conditions, the Department directed Connecticut to report on proposed legislative amendments and demonstrate good faith efforts in seeking appropriate revisions. Further, in the interim, under the Special Conditions and as part of the State's general supervisory responsibilities under 30 U.S.C. §1412(a)(11) and 34 C.F.R. §300.600, it must ensure that public agencies and other personnel responsible for implementing the IDEA do not prohibit a party from raising in a due process hearing, an issue that was not raised at a PPT meeting.

Although I appreciate your efforts in beginning to address the Special Conditions regarding R.C.S.A. Section 10-76h-3 through proposed clarification and guidance, the Department has two concerns. The first issue is the failure to submit the progress reports on legislative amendments specified in the Special Conditions. The second issue

concerns the content of the proposed memorandum addressed to Superintendents, Special Education Directors, Hearing Officers and the State Advisory Council.

One of the Special Conditions on Connecticut's FY 2002 Part B grant included specific requirements for submission of progress reports "by November 29, 2002 (with a draft of its proposed legislative amendment and its revised interpretations of or revisions to its regulations and any other eligibility documents containing the PPT requirement); by January 31, 2003 (with proposed statutory amendments submitted to the legislature as Connecticut's state legislature next convenes on January 8, 2003)." The terms of Connecticut's grant required that the Board of Education make good faith efforts to revise this statutory provision, including submission of proposed legislative changes. Your January 13 letter and the proposed memorandum do not report on proposed legislative amendments. The State must report on its legislative proposals in order to demonstrate its good faith efforts to revise this provision.

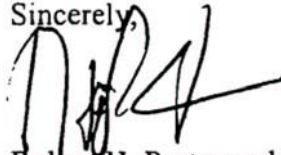
The Department also is concerned with language in the memorandum attached to your January 13 letter purporting to clarify how Connecticut will comply with Part B pending legislative amendments. The memorandum states that the Board of Education will appoint a hearing officer regardless of whether a PPT meeting is referenced in the complaint. The memorandum specifically instructs hearing officers to consider whether the issues raised at the hearing were previously raised at a PPT meeting when ruling on a motion for dismissal or issue exclusion or when raised by the hearing officer, *sua sponte*. (Memorandum, page 2).

The proposed memorandum fails to instruct public agencies and hearing officers regarding the appropriate conduct of hearings given the Department's determination that the State provision on PPT meetings is inconsistent with the IDEA to preclude issues being raised in a due process hearing that were not previously raised at a PPT meeting. Specifically, in order to effectively ensure that Connecticut is in compliance with its general supervisory responsibilities and the Special Conditions on its grant, at a minimum, the memorandum must include additional guidance. First, it must advise public agencies that when engaged in due process hearings, they may not raise the requirements of R.C.S.A. Section 10-67h-3 as a bar to parents exercising their right to a due process hearing on any matter related to the identification, evaluation or educational placement of a child with a disability or the provision of a free appropriate public education to that child. See 20 U.S.C. §1415(b)(6) and 34 C.F.R. §300.507. Second, impartial hearing officers conducting due process hearings must be informed that, under the IDEA, parties are not prohibited from raising, in a due process hearing, an issue that was not raised in a PPT meeting. Hearing officers can comply with the IDEA by exercising their discretion to not invoke R.C.S.A. Section 10-67h-3 as a basis for dismissing a due process complaint or as a basis for excluding an issue from consideration during a hearing.

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I would ask that the memorandum be revised appropriately and resubmitted to the Department, and that you also submit the relevant legislative information required under the Special Conditions as soon as possible.

I look forward to our continued cooperation in this matter so that, together, we can ensure high expectations and results for children with disabilities so that no child is left behind.

Sincerely,

Robert H. Pasternack