UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN 26, 2002

By Fax and Overnight Delivery

Mr. George P. Dowaliby
Bureau Chief
State of Connecticut
Department of Education
25 Industrial Park Road
Middletown, Connecticut 06457

Dear Mr. Dowaliby:

Connecticut submitted as part of its eligibility documents Ct. Stat. Ann. §10-76h-3(h) and §J (page 318) of its original Procedural Safeguards, which provide that "[n]o issue may be raised at a hearing unless it was raised at a planning and placement team [PPT] meeting held for the child." Section VII, E of the revised Procedural Safeguards document submitted on May 20, 2002 also provides that "[e]ither party requesting a due process hearing is required to have raised their issues at a planning and placement team [PPT] meeting before proceeding to a hearing." The requirement that issues be raised at a PPT meeting before they can be addressed at a due process hearing establishes impermissible notice and exhaustion burdens inconsistent with the Individuals with Disabilities Education Act (IDEA) and its implementing regulations.

In the Fall of 2000, the Office of Special Education Programs (OSEP) informed Connecticut in writing (in the initial issues chart) that its PPT requirement is inconsistent with the IDEA, including the IDEA's explicit notice requirements and due process hearing rights. In a conference call on April 23, 2001, OSEP further explained that Connecticut's PPT requirement is inconsistent with three provisions of the IDEA: (1) the right of a party to have a hearing held on "any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child" as set forth in §615(b)(6) of the IDEA and 34 C.F.R. §300.507(a)(1); (2) the very express and limited notice requirements of the IDEA (for parents and school districts); and (3) the specific statutory provision of §615(l) of the IDEA which only requires that prior to proceeding to a civil action that parties first have exhausted the due process and appeal procedures under §§615(f) and (g).

We understand Connecticut in its May 20, 2002 submission responded to these concerns by stating that parties are not prohibited from raising any issue at a due process hearing as long as it was raised first at a PPT meeting. Connecticut also indicated that the PPT requirement was intended to promote early resolution of disputes. However, these arguments do not address the primary concern, which is that Connecticut is barring

parents and school districts from raising at a due process hearing any issue not previously raised at a PPT meeting. We find no support in the IDEA statute or regulations for imposing this requirement on a party's access to a due process hearing.

Regarding Connecticut's imposition of additional notice burdens through its PPT requirement, IDEA contains very express notice requirements for both parents and school districts. For school districts, these notice requirements are contained at §§615(b)(3), (c) and (d) of the IDEA. 20 U.S.C. §§1415(b)(3), (c) and (d). Parents are obligated to provide advance notice to school districts in certain instances to maximize their ability to receive reimbursement for placing their child in a private school. *See,* 20 U.S.C. §1412(a)(10)(C)(iii). However, this notice requirement for parents does not preclude parents from proceeding with a due process hearing for failing to provide the requisite notice. Connecticut's concern that parents provide school districts notice of their claims to enable informal resolution prior to hearing is more than adequately addressed through the IDEA requirement that parents provide school districts with notice of the child's name and other pertinent information including "a description of the nature of the problem" and "a proposed resolution of the problem." 20 U.S.C. §1415(b)(7). Connecticut indicated during the April 23, 2001 conference call that the lack of notice by parents occurs only with parents represented by attorneys. During the call, we suggested alternate remedies available to address attorneys' failure to provide the notice under §615(b)(7). We also noted during the call that Connecticut's PPT requirement unduly penalizes unrepresented parents and may result in the unintended (and undesirable) consequence of parents needing to have attorneys present at PPT meetings.

Regarding the exhaustion issue, the U.S. Court of Appeals for the Second Circuit in *Mrs W. v. Tirozzi*, 832 F.2d 748 (2nd Cir. 1987), has clearly noted that IDEA §615(f) (the precursor to the current §615(l)), does not require exhaustion except specifically of the due process hearing and appeal procedures. Indeed, the *Mrs. W.* Court noted that exhaustion of due process hearing procedures is not even required under certain circumstances (citing case law and legislative history of the Act). Connecticut's PPT requirement goes well beyond IDEA's express exhaustion requirements contained at §615(l).

Connecticut's PPT requirement must be deleted from: (1) Ct. Stat. Ann. 10-76h-3(h); (2) Connecticut's Procedural Safeguards documents (page 318, section J of the original and Section VII.E. of the May 20, 2002 submission); and (3) any other eligibility documents that contain this requirement. These documents must be resubmitted to OSEP for approval. With regard to the statutory change, please submit by no later than 3:00 p.m. on Friday, June 28, 2002 your proposal including the proposed revised statute and a timeline by which the PPT requirement will be deleted. Kindly also confirm in writing to OSEP by the same time on Friday, June 28, 2002 the methods that Connecticut will use to provide notice of deletion of the PPT requirement to school districts and parents.

If you have any questions, please contact Dr. JoLeta Reynolds at 202-205-5507 or me.

Sincerely,

Stephanie S. Lee
Director
Office of Special Education Programs

cc: Theresa C. DeFrancis