



STATE OF CONNECTICUT

COUNCIL ON DEVELOPMENTAL DISABILITIES



Good afternoon Chairman Gaffey, Chairman Fleischmann, Ranking Members, and Members of the Committee.

My Name is John Flanders and I am speaking today as the Chair of the Legislative and Advocacy Committee of The Connecticut Council on Developmental Disabilities. The Council on Developmental Disabilities is a Governor-appointed body of people with disabilities, family members and professionals who work together to promote the full inclusion of people with disabilities in community life. I should also point out that I am the father of a child who qualifies for special education and an attorney whose practice is limited to representing families in special education matters.

I am here to express the Council's strong opposition to Section 1 of Raised Bill 7176. This change reverses current state policy. It will place yet another, and unfair, obstacle before the families of children with disabilities who are not receiving an appropriate education.

It is not clear to the Council why this particular change is being proposed. We presume that is a mistaken attempt to bring our state law into line with what at first glance appear to be current Federal law covering special education. At the end of 2005 the United States Supreme Court handed down a ruling in *Schaffer v. West* in which it stated that the burden of proof in a due process hearing should be on the party challenging the child's IEP. However, this case originated in Maryland where there was no statute or administrative regulation establishing which party was to bear the burden of proof. For those states like Connecticut that do have such a law, the Court explicitly declined to invalidate those rules. Since then, in fact, the states of Virginia, Hawaii and the District of Columbia have considered bills to place the burden of proof on the schools.

The bottom line is that we do not have to take this step. Further we should not do so, not only because it will place another obligation on the backs of families who have children in special education, but because it is unlikely to do anything to make the special education process any less expensive or complicated for the cities and towns.

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You are undoubtedly going to hear that the current burden of proof puts schools and therefore each town's taxpayers at a great disadvantage when there is a disagreement with a family over a child's special education program. You will hear that parents are using that supposed disadvantage to force towns to spend exorbitant sums on extraordinary services for their children. But is that so? We on the Council do not believe it is. Consider:

Our schools have a legal obligation to provide our children who face disabilities with an appropriate education. They have substantial resources to meet that obligation, and significant control over the process of developing an Individual Education Program (IEP) for each eligible student. In the majority of cases they do a good job. Most parents are satisfied with the programs provided for their children, and nationally only five out of every 10,000 families file for due process.

However, when there is a disagreement between the family and the school over a child's special education program the parents are not in the driver's seat, not by a long shot. Many parents tell me how intimidating the process can be. They are required by both the IDEA and state law to be members of the planning and placement team that creates the child's IEP, but otherwise the team is almost always composed primarily of school employees. In general, the evaluations used to identify their children's needs are performed by educational and mental health professionals who are employed or contracted by the school. The implementation of the program is necessarily entirely in the hands of people in the employ of the local Board of Education, and the responsibility to determine if the child is making appropriate progress in the curriculum is almost exclusively in the hands of those teachers. That determination, by the way, is often subjective. The team is required by law to consider the parent's concerns and any evaluations they provide, but are not required to act upon them, merely to provide written notice as to why the parent's suggestion was not implemented. In my experience that notice often consists of the statement the "the team does not consider X to be needed at this time."

Given the best will in the world and the best intentions mistakes will be made. Improper expectations will be applied. Misunderstandings of the unique and complicated needs of a child will be made. Educational goals will differ. So, in a small number of cases matters deteriorate to the point where a due process hearing becomes necessary. A hearing officer is appointed to make a determination on the issue. That determination must be based on a preponderance of evidence

presented. The school is able to rely on the people in its employ who designed the IEP to testify in its favor. The parents, without the advantage of staff and contracted professionals, without daily access to their child's classroom and records must use their own resources to bring in professionals to provide a body of facts to rebut that provided by the school. Requiring the school to bear the burden of proving that the program they designed and implemented is appropriate cannot possibly give parents an unfair advantage in such a situation.

Are parents particularly encouraged to enter and pursue expensive due process hearings? Do they use this so called advantage to run rampant over our schools? The facts do not seem to bear that out. The Department of Education posts the results of special education due process hearings on its web site. For 2006 there are 120 decisions. Of those 109 were withdrawn or dismissed because the parties were able to reach an agreement. Six were decided in favor of the school and one had a mixed results with some issues found in favor of the school and some for the parents. This does not look like a system where the parents hold an unfair advantage to me.

Nor is there any question of who will be most affected by this change. Of the 120 decisions posted for 2006 I counted only six of the cases initiated by the schools

What this section of SB 7176 proposes to do is to reverse an existing policy, an action that we are not required to take. It proposes to solve a problem that does not exist, and it proposes to do so by putting a new barrier in front of the only party who has no choice but to be in the process, and the one least able to protect himself, a child with a disability. We urge you in the strongest possible terms not to reverse our current law and not to place the burden of proof on the backs of our children and their families.