



CONNECTICUT LEGAL SERVICES

A PRIVATE NONPROFIT CORPORATION

587 MAIN STREET NEW BRITAIN, CT 06051

TELEPHONE (860) 225-8678

FAX (860) 225-6105

E-MAIL NEWBRITAIN@CONNLEGLALSERVICES.ORG

JOANNE LEWIS
REGIONAL DIRECTOR

NEIL L. BROCKWEHL
MICHAEL BURNS
KRISTEN NOELLE HATCHER
CATHERINE A. HOLAHAN
DAVID STOWE
MARTIN WHEELER
ATTORNEYS AT LAW

TERESITA TORRES-ARROYO
LORELEI WEAVER
SUPPORT STAFF

ADMINISTRATIVE OFFICE
62 WASHINGTON STREET
MIDDLETOWN, CT 06457
(860) 344-0447

MITCHELL PEARLMAN
BOARD CHAIR

STEVEN D. EPPLER-EPSTEIN
EXECUTIVE DIRECTOR

LAW OFFICES

211 STATE STREET
BRIDGEPORT, CT 06604

587 MAIN STREET
NEW BRITAIN, CT 06051

153 WILLIAMS STREET
NEW LONDON, CT 06320

20 SUMMER STREET
STAMFORD, CT 06901

85 CENTRAL AVENUE
WATERBURY, CT 06702

872 MAIN STREET
WILLIMANTIC, CT 06226

SATELLITE OFFICES
(CALL FOR OFFICE HOURS)

5 COLONY STREET
MERIDEN, CT 06451

62 WASHINGTON STREET
MIDDLETOWN, CT 06457

98 SOUTH MAIN STREET
SOUTH NORWALK, CT 06854

564 PROSPECT STREET
TORRINGTON, CT 06790

155 WEST MAIN STREET
ROCKVILLE, CT 06066

TESTIMONY OF CONNECTICUT LEGAL SERVICES, INC. IN OPPOSITION TO H.B. 7176, AN ACT CONCERNING SPECIAL EDUCATION

Good afternoon Senator Gaffey, Representative Fleischman and members of the Education Committee. My name is Catherine Holahan and I am an attorney in the Children at Risk unit of Connecticut Legal Services, Inc. (CLS). The Children at Risk unit at CLS provides legal representation to low-income families who have children with disabilities, primarily to assist in obtaining access to special education and mental health services.

I am here to testify in opposition to Lines 4-6 of H.B. 7176, An Act Concerning Special Education.

Lines 4-6 of H.B. 7176 seek to change the burden of proof in special education due process hearings to be on the party requesting the hearing, which in many cases is the parent of a child with disabilities.

Connecticut State Regulations § 10-76h-14 specifically requires that in special education due process hearings, "*the public agency* has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency." (emphasis added).

The public agency, not the parent, is the party who is responsible for the appropriateness of the educational program and who has unlimited access to all of the information about the program being provided. School districts also have access to their own district employees and psychologists to testify as expert witnesses. Parents, however, must pay out-of-pocket for their own expert witness fees and, pursuant to a recent Supreme Court decision, parents are no longer entitled to recover those fees from the district, even when they are the prevailing party. *Arlington Central School District Board of Education v. Murphy*, 126, S. Ct. 2455 (2006). **School districts are in a far better position to defend the appropriateness of an IEP than parents are to prove the opposite.**

The recent Supreme Court decision regarding the burden of proof in special education due process hearings, *Schaeffer v. West*, 546 U.S. 49 (2005), does not impact Connecticut. In *Schaeffer*, the Court held that because the Individuals with Disabilities in Education Act (IDEA) is silent on the issue of burden of proof, unless state law specified otherwise, the burden would fall to the party that had requested the administrative hearing. Since Connecticut has the burden of proof designated by regulation, *Schaeffer* does not impact our state.



Soon after *Schaeffer v. Weast* was decided, the Connecticut Commissioner of Education issued a Circular Letter announcing that the Department had no plans to repeal Connecticut's burden of proof regulation, stating that "the standard in Connecticut articulates a valid state policy that school districts are in a better position to defend the appropriateness of an IEP." Circular Letter, Series 2005-2006, C-9 (February 22, 2006). We agree.

We have additional concerns regarding Sec. 5, lines 214-246, which seek to establish a 2-year demonstration project to improve student achievement and close achievement gaps between groups of students. While we support the project and its goals, we are concerned that the project appears to be limited to non-urban areas. If such a demonstration project is to go forward, then we recommend that it include one or more urban areas.

In conclusion, Connecticut Legal Services, Inc. strongly urges the Education Committee **to oppose H.B. 7176, particularly lines 4-6** which would change the burden of proof in special education due process hearings. I thank you for your time and consideration of this matter.