



STATE OF CONNECTICUT

OFFICE OF PROTECTION AND ADVOCACY FOR
PERSONS WITH DISABILITIES

60B WESTON STREET, HARTFORD, CT 06120-1551

JAMES D. McGAUGHEY
Executive Director

Phone: 1/860-297-4307
Confidential Fax: 1/860-297-4305

Testimony of the Office of Protection and Advocacy for Persons with Disabilities
Before the Education Committee
February 21, 2007

Presented by James D. McGaughey
Executive Director

Good afternoon and thank you for this opportunity to comment on **Raised Bill No. 7176, AN ACT CONCERNING SPECIAL EDUCATION**. This bill would make a number of changes to the State statutes that govern special education. Specifically, it would: 1) establish, as a matter of law, that the burden of proof for issues in dispute at a due process hearing will lie with the party requesting the hearing; 2) terminate eligibility for special education services upon high school graduation or on the day the student turns 21 years of age; 3) institute a different formula for funding State contributions for "extraordinary" special education costs; 4) initiate a significant change in the evidence required for identifying students with specific learning disabilities; and, 5) establish a two year demonstration program to provide interventions for students who are struggling academically or behaviorally whether or not they are identified as special education students.

Our Office opposes the language in Section 1 of this bill that creates an explicit, statutory "burden of proof" for parties requesting due process hearings. In almost all cases, due process hearings are requested by parents and guardians who are contesting significant issues regarding the way their child's needs have been evaluated or are being addressed. In our Office's experience, parents do not happily initiate those requests for due process - requests that usually come only after a lengthy series of disappointing, frustrating interactions with district administrators. When they feel they must request a due process hearing, these parents experience all the angst inherent in "fighting city hall". They face considerable expense, stress and uncertainty, and know they risk alienating administrators who will continue to hold considerable power over their child's future. Although "due process" was originally envisioned as a fair, quick, low cost way to even the playing field between parents and powerful school systems, changes at both the federal and state levels over the past few years have made it significantly harder for parents to get their issues heard at due process hearings. It is unfair to now require them to bear the burden of proving that the district's evaluations, plans, personnel, educational practices or other aspects of their child's program are inadequate. Parents do not typically have access to the information and expertise necessary to meet this evidentiary burden without conducting extensive discovery, hiring their own experts and paying substantial attorney fees. Placing this burden on them can only increase costs, delay decisions and, ultimately, deny many of them their day in court. Districts have far more access to information about their own practices and programs than does a parent. I realize that a recent U.S. Supreme Court decision (Schaffer v. Weast) allows this burden to be placed on the party that initiates due process under the federal IDEA. I do not believe, however, that Connecticut is required to embrace that decision by amending its State statutes. In the name of fairness, I urge you to reject Section 1 of this bill, and not adopt the result in Schaffer as the public policy of Connecticut.

Phone: 1/860-297-4300, 1/800-842-7303; TTY: 1/860-297-4380; FAX: 1/860-566-8714

www.ct.gov/opapd

An Affirmative Action / Equal Opportunity Employer

With respect to Section 2 of the bill, I would point out that terminating special education eligibility “upon the child’s twenty-first birthday” could work a considerable hardship for students who are enrolled in various internship or vocational training programs and are receiving school-to-work transition supports. Historically, students who do not meet requirements for graduation have been considered eligible for educational services through the end of the school year in which they turn twenty-one. This has assured some level of continuity for the student and his or her family, and allowed for an orderly transition to adult support services. Funding for day services through other state agencies that can pick up costs of supporting a person at work (e.g. DMR) is usually allocated according to fiscal years, and planning has historically anticipated transitions as occurring at the end of the school year - not on the day of an individual’s birthday. This problem could be cured by adding clarifying language to Section 2 to the effect that special education and related services may continue until the end of the school year if necessary to ensure the success of the individual student’s transition plan.

I am also concerned about the proposed changes in identification criteria for specific learning disabilities in Section 4. Depending on how the State Department of Education’s recently created task force ultimately defines the term, “scientific research based interventions”, assessing whether a child responds to such interventions may well help identify children with learning disabilities earlier in their school careers. However, the way this section is worded, school systems would “not [be] required to consider whether such child has a severe discrepancy between achievement and intellectual ability...” Establishing the existence of such a discrepancy has historically been one of the first steps in identifying a student with a specific learning disability. Even if we are to encourage “scientific, research based interventions”, there is no reason that school districts should now be permitted to ignore discrepancy evidence. The concern here is that statutorily excusing school systems from having to consider discrepancy evidence may delay identification of learning disabled students while various trials of “scientific, research based interventions” are attempted - interventions that may well be useful for remediation purposes, but which should not be used as a device to delay and possibly deny students the effective, accountable educational programming to which they are entitled.

The demonstration programs described in Section 5 are a promising step, but their description raises a similar concern about delaying proper identification. While there is little question that adopting evidence-based curricula and instructional approaches can benefit many students, including students with specific language-based learning disabilities, participation in one of these demonstration projects should not occasion a delay in identifying those students who truly need individual diagnostic evaluations and specific interventions. The need for a thorough, individual assessment is even more acute when dealing with a child with behavioral difficulties – difficulties that may be due to a previously unrecognized disability such as an autism spectrum disorder or a psychiatric disability. Understanding the origins and specific communicative function of a student’s “problem” behavior is a critically important step - one that is often quite time-consuming and labor-intensive. Hopefully these demonstration projects will lead to adoption of practices that will make it easier to integrate students with learning and behavioral

Testimony of James D. McGaughey
OPA Executive Director
Page 3 of 5
February 20, 2007

disabilities into the general educational environment. However, they should not be used as a substitute for individual assessment and programming, or to “pre-screen” students who genuinely are eligible for special education and responded to on an individual basis.

Our office can contribute little to discussions about changing the extraordinary costs reimbursement formula, as detailed in Section 2 of the bill. As the threshold for State contributions would be lowered, the proposed new formula would appear to offer school districts increased assistance for more typical special education programs. Hopefully, this will translate into more equitable distribution of resources amongst all special education students, and higher quality inclusive education programs. However, it also appears that the amount of State reimbursement for the most expensive programs, which often involve out-of-district residential placements, would diminish. This will create a considerable disincentive for continuing to place students into those programs. While I am no fan of unnecessary out-of-district placements, I would be more comfortable with this result if I believed more districts were competent to provide high quality in-house educational programs for all their students, particularly students with “low incidence” disabilities that involve significant emotional or behavioral components.

In fact, as this bill appears to be aimed at comprehensively revising State special education law, I would also urge you to consider filling a major gap in statutory protections for special education students who may be subjected to restraint and seclusion in their public schools.

As you may recall, the tragic deaths of two Connecticut youngsters in 1998, one in a psychiatric hospital, the other in an out-of-state residential program prompted a groundbreaking investigative series on “Deadly Restraints” in the *Hartford Courant*. That series - which included the first ever attempt to compile nation-wide data on restraint-related deaths and injuries - produced both a good deal of soul-searching in the mental health system, and federal legislation intended to limit the use of restraints and seclusion and ensure oversight and accountability in hospitals and residential programs receiving federal funds. Connecticut did not wait for the federal legislation, and in fact went further than the federal government, adopting Public Act 99-210 which imposes strict limits on the circumstances under which restraints and seclusion may be used, outright prohibits certain restraint methodologies, requires continuous observation of anyone placed into restraints, requires staff training and implementation of various safeguards, such as maintaining detailed documentation and reporting incidents and injuries to oversight agencies.

This legislation has had a positive effect in mental health and disability service systems around the country. Today, in both adult and children’s programs there is much more awareness of the potential risks and inherently traumatizing effects of using these practices. Some programs have virtually eliminated seclusion and restraint; others have significantly reduced their use. However, there is a major gap in the safety net because none of the legislation - federal or State - reaches to regular public schools. Special education schools - those operated by regional education service centers or that serve as out of district placements for special education students

are also covered by the state statute. Increasingly, however, students with the types of disabilities that place them at risk of being restrained and secluded are being educated in local public schools. These disabilities include autism spectrum disorders, intellectual disabilities and various psychiatric disabilities. While we generally applaud the movement to include these students in regular school environments, we do not want to see them, or any others, placed at risk of harm because regular school staff lack training and no one is watching to ensure that programming practices meet contemporary standards for safety and humane treatment.

In response to a number of complaints we have received over the past year, our Office hosted an informational hearing on this issue last December. We heard from representatives from the State Departments of Education and Children and Families, from experts on educating children with behavioral issues, and, perhaps most importantly, from parents, guardians and siblings of students who had been restrained and secluded in their schools. Several themes emerged:

- Although the State Department of Education has issued guidelines for educating students with emotional and behavioral problems, and has made training in positive behavior management techniques available to local school districts, there are no mandatory programming standards limiting or governing the use of restraint and seclusion in public schools.
- No one knows how often students are being restrained or subjected to seclusion in public schools in Connecticut, or what practices or techniques are being employed in particular districts. Anecdotally, we know that practices vary considerably between districts. But, there are no requirements for reporting and no state oversight mechanisms that track or routinely inquire about the frequency or local policies on restraint and seclusion.
- There appear to be no requirements that parents or guardians be notified when their child is placed in seclusion or restraints, nor is there a requirement that districts obtain parental consent for proposed use of restraints or seclusion. In fact, several of the parents who testified indicated that they did not know their children were being routinely confined in a seclusion booth (which, in one case, was a converted supply closet), and, when they asked why they had not been told, their school system had informed them that there was no requirement that they either give consent or be notified.
- There are no effective investigation and remediation mechanisms to which parents can turn for answers when they question the appropriateness of restraint and seclusion practices. The State Department of Education administers a complaint resolution process, but focuses compliance with the provisions of state and federal statutes and regulations. Because there are no laws or regulations governing use of restraints or seclusion in public schools, they can only make indirect inquiries about whether a

special education student is being denied a Free Appropriate Public Education or about whether an Individual Education Plan was appropriately developed and adhered to. Nor do their investigations typically involve site visits or attempts to sort out conflicting witness statements. DCF can investigate allegations of abuse and neglect, but despite the fact that that agency's own clinical experts recognize the detrimental effects of routinely using restraint and seclusion as a programmatic practice, when that agency investigates allegations against educators and other professionals they feel they cannot apply higher standards than they would use to determine whether parents and families had used excessive punishment on a child.

- There is considerable confusion over what constitutes "time out" and what might more properly be termed "seclusion". Some schools have apparently converted or constructed closet-sized seclusion rooms but call them "time-out rooms" or "safe rooms". Others refer to time out as simply taking a brief walk or brief removal from the immediate environment. Some districts may be going down the wrong road on this simply because they have developed home-grown programs or have hired staff who adhere to very out-of-date programming practices. Expert consultants who testified at our informational hearing indicated that some districts were very open to their recommendations about positive behavioral supports, but that some were dismissive and closed-minded.
- In at least one case, a child with autism appears to have been very inappropriately confined for several hours in a seclusion room because staff did not know what else to do. The child had experienced a "melt-down", and spent the entire time crying and pounding against the door. He had been "taken to the floor" by a paraprofessional who did not use approved physical management techniques, and then placed into the seclusion booth. In another school, a child who had been severely traumatized and ultimately removed from his original family home, where he had been routinely locked in a closet for days on end, was routinely confined in a seclusion booth in his school. This went on for months before his guardian, his grandmother, learned of it. The school called her after the boy had tried to run away from school. Evidently, the school administrators thought that his running away was worthy of a telephone call to the guardian, but that routinely holding the child in a confined space was not.

Legislation to address these issues is being drafted by the Select Committee on Children, and will no doubt find its way to this Committee. I urge you to act favorably on it when it gets here. Restraint and seclusion are powerful, intrusive and possibly even deadly measures that should only be used as a last resort to prevent imminent harm. There is no reason that the safeguards that surround their use in residential programs, hospitals and special education schools should not also apply to local public schools. Keeping our fingers crossed is not enough - there is a very real need for rules, safeguards and oversight in this area.

Thank you for your attention. If you have any questions, I will try to answer them.