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TESTIMONY OF CONNECTICUT LEGAL SERVICES, INC. IN OPPOSITION TO SECTIONS 1, 4, AND 5 OF SB 1142, AN ACT CONCERNING RELIEF OF STATE MANDATES ON SCHOOL DISTRICTS

Good afternoon Senator Gaffey, Representative Fleischman and members of the Education Committee. My name is Catherine Holahan and I am the managing attorney of 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 appropriate educational and behavioral health services.

I am here to testify in opposition to Sections 1, 4 and 5 of SB 1142, An Act Concerning Relief of State Mandates on School Districts.

Section 1 seeks to delay the implementation of important changes to the suspension law for 2 years. The change to Section 10-233c of the general statutes that goes into effect on July 1, 2009; would prohibit school districts from imposing out-of-school suspensions on students unless "the pupil being suspended poses such a danger to persons or property or such a disruption of the educational process that the pupil shall be excluded from school during the period of suspension." **This language is crucial to curtailing the widespread use of out-of-school suspensions in response to relatively minor offenses that could be handled in much more effective and positive ways.** The change to 10-233c does NOT mandate in-school suspension, but rather qualifies when out-of-school suspension may be used. Even with that change, however, school districts retain enormous discretion on when to impose out-of-school suspension.

Data collected by the State Department of Education and analyzed in a report by CT Voices for Children has revealed certain facts about out-of-school suspension in Connecticut: (1) Out-of-school suspensions are surprisingly common; (2) the majority of out-of school suspensions in Connecticut have been for relatively minor offenses, such as attendance violations, disrespect and language; and (3) low-income students, minority students and students with disabilities are all disproportionately subjected to exclusion from school by suspension.¹

¹Ali, Taby and Dufresne, Alexandra, "Missing Out: Suspending Students from Connecticut Schools" CT Voices for Children (August 2008).



At CLS, we meet the children behind this data and unfortunately can provide many examples from our cases in which out-of-school suspension has been overused and used for minor school policy violations. We also see many cases in which repeated suspensions push students toward failure and dropping out when alternative interventions would have been more productive.

Alternative disciplinary methods and methods to improve school climate, which prevent disciplinary incidents from occurring, are much more effective than excluding children from school. Although schools still retain discretion in determining what conduct warrants out-of-school suspension, the changes to the law effective in July at least will provide some guidance and reduce the unnecessary exclusion of students from school.

Section 4 seeks 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.**

Although the Supreme Court issued a decision regarding the burden of proof in special education due process hearings, *Schaeffer v. Weast*, 546 U.S. 49 (2005), it 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.

The State Department of Education has already twice declined to change the burden of proof. 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). The state regulations are now being reauthorized and the State Department of Education has again declined to change the

burden of proof in those regulations. **We agree with the State Department of Education and urge the Education Committee not to change the burden of proof in special education due process hearings.**

Section 5 seeks to terminate educational services for young adults with disabilities immediately upon their 21st birthday, rather than at the end of that school year as is current practice in Connecticut. Connecticut State Regulations §10-76d-1 currently provides that special education “shall be continued until the end of the school year in the event that the child turns twenty-one during that school year.” The state regulations are currently going through the lengthy process of reauthorization, which has included opportunities for public comment. The State Department of Education has recognized the importance of allowing young adults with disabilities who are still in school at age 21 at least to finish out the school year and has maintained that section of the regulations. Educational programs, and specifically transition programs, are designed to run through the school year. It would be devastating and counter-productive to terminate services for a young adult with disabilities right in the middle of a program. **We agree with the State Department of Education and urge the Education Committee not to cut-off educational services mid-school year for young adults who turn age 21.**

In conclusion, CLS respectfully urges the Education Committee to **oppose Sections 1, 4 and 5 of SB 1142, An Act Concerning Relief of State Mandates on School Districts.** Thank you for consideration of our testimony.