

State Advisory Council On Special Education

STATE DEPARTMENT OF EDUCATION • 25 INDUSTRIAL PARK ROAD • MIDDLETOWN, CT 06457



An Act Concerning Relief of State Mandates On School Districts

Joint Committee on Education
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Testimony

By

Brenda J. Sullivan, Chair
State Advisory Council on Special Education (SAC)

Senator Gaffey, Representative Fleischmann, and Members of the Joint Education Committee. My name is Brenda Sullivan, Chair of the State Advisory Council on Special Education, also known as SAC. I am also a parent of a child with severe multiple disabilities of which cerebral palsy, blindness and severe seizure disorder are the most severe. I write to express the views of the SAC on **Raised Bill 1142, An Act concerning Relief of State Mandates on School Districts.**

Since 1975, the State Advisory Council on Special Education has been authorized under the Individuals with Disabilities Education Act (IDEA) to investigate and report unmet needs for Connecticut's special education population to the State Board of Education and the Connecticut General Assembly. Under Chapter 164 Section 10-76i of the Connecticut General Statutes, the SAC is further authorized to "advise the General Assembly, the State Board of Education and the Commissioner of Education" on special education matters.

On March 19, 2007 our previous Chair, Dr. Jim Granfield, came before this Committee and testified on issues raised in **Bill 7176, "An Act Concerning Special Education."** I appear before you once again today to reiterate the SAC's position on two issues that have been raised again in **Raised Bill 1142, "An Act Concerning Relief of State Mandates on School Districts."**

Burden of Proof: The SAC strongly **OPPOSES THE REPEAL** of Section 1, Subdivision (1) of subsection (d) which states "*In making a determination as to the issues in dispute, the hearing officer or board shall review the evidence presented in the hearing with the burden of proof on the party requesting the hearing.*"

The Council believes that this change will have the following negative ramifications:

1. It will create a financial hardship to families, a considerable number of whom are already burdened with high medical and support therapy costs;
2. It will create an even greater unfair advantage for school districts and a correspondingly greater unfair disadvantage for parents. School Districts already have multiple advantages over parents, especially during a Planning and Placement Meeting (PPT). The reality is that many, if not most; parents are currently unable to adequately defend their child's IEP due to having little to no training on properly interpreting evaluations as well as fully understanding IEP content and special education procedural

safeguards. This is confirmed by the "2007/2008 Connecticut Special Education Survey Summary Report", in which parents reported (63.5%) they have not attended and/or received parent training sessions in the past year.

3. It will make it virtually impossible for parents to ever prevail against a District in a Due Process Hearing. The expertise of the Districts coupled with their control of student records already results in the majority of Due Process Hearings ruling in favor of the Districts. The Council is greatly concerned that the proposed Bill will "stack the deck" even further in ensuring favorable outcomes for the Districts, which, in turn, will also impede the Districts' mandate to provide FAPE (Free and Appropriate Public Education).

Our position against changing the "burden of proof to party requesting a hearing" is shared by an overwhelming number of national organizations that advocate for persons with disabilities. I quote from two such sources:

In a brief (dated April 29, 2005), authored by ARC of the United States, Autism Society of America, Epilepsy Foundation, NAMI, United Cerebral Palsy, and the National Law Center on Homelessness & Poverty and submitted to the United States Court of Appeals for the Fourth Circuit, Schaffer vs. Weast in support of the Petitioners they argued the following:

- a) "Studies over the past 30 years have documented that school districts hold significant advantages over parents in the process for developing the IEP and at any ensuing due process hearings. These advantages demonstrate the need for the burden of proof to be on school districts to show at any due process hearing, that the IEP developed is appropriate"...
- b) School districts generally will have information not available to parents that is relevant in developing an IEP and at any subsequent due process hearings. "In practical terms, the school has an advantage when a dispute arises under the Act: the school has better access to the relevant information, greater control over the potentially more persuasive witness (those who have been directly involved with the child's education) and greater overall educational expertise than parents" ...
- c) The burden of proof dictates the structure of the proceeding, determining who must present their evidence first. See O'Neal v. McAninch, 513 U.S. 432, 436 (1995) (courts determine who has the burden to help control the presentation of evidence at trial") Unrepresented and inexperienced parents are at a disadvantage if they have to present their "case" first, not understanding what is expected of them and lacking the opportunity to model their presentation on that of the school district's experienced representative....
- d) Most parents who request an impartial due process hearing will be unrepresented by counsel and will not have participated in such a hearing before. See 150 Cong. Rec. S5351 (daily ed. May 12, 2004) (Sen. Kennedy) ("Most parents don't have access to any attorney, or must rely on low-cost legal aid. And data from surveys shows that even this help is in short supply.") By contrast, the school district is normally represented by an attorney, a repeat player familiar with the formal and informal rules surrounding such proceedings. See *ibid* ("Those parents who have

the courage to go it alone face schools that are well represented. State data shows that in 2003 schools were much more likely to bring an attorney to a hearing than parents were.”)

The National Council on Disability Position Statement to the Supreme Court of the United States “Individuals with Disabilities Education Act Burden of Proof: On Parents or Schools? Schaffer v. Weast” (Dated August 9, 2005). Drafted by Peter W.D. Wright who is the founder of WrightsLaw concludes the following:

“When Congress reauthorized IDEA in 2004, they wrote:

[T]he implementation of this title has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.

It is undisputed that millions of children with disabilities were denied an education and excluded from school. Today, in 2005, there are significant problems with children not being taught basic reading, writing, arithmetic, and spelling skills so they can be economically self-sufficient and employable. The remedial nature of special education law, the procedural safeguards from *Mills*, decades of failure by schools to educate children with disabilities require that the school district bear the burden of proving that their proposed education program, denial of special education eligibility, or other action is proper, under the Act.

School districts should have the burden of proof in issues about IEP’s, placement, eligibility, and other matters related to an appropriate education.”

SAC also strongly **OPPOSES** Section 5 - *Special Education Terminates when the Student Turns 21*, specifically Subparagraph (A) of Subdivision (5) of section 10-76a. *“The obligation of the school district under this subsection shall terminate when such child is graduated from high school or [reaches age twenty-one] upon the child’s twenty-first birthday, which ever occurs first;”*

SAC’s position is that the status quo, allowing students to finish the school year in which they turn twenty-one, is fair and matches the rules for other school children. There is no statutory provision that arbitrarily terminates the ability of a non-special education student to complete a high school diploma because he or she reaches a certain age. All Special Education Students should be permitted to finish the school year in which they turn twenty-one in order to complete the IEP created for that year, including the specific elements of that student’s transition plan.

Ladies and gentlemen, families with children with disabilities already deal on a daily basis with hardship and stress in all facets of their lives, including the education of their children. On behalf of the State Advisory Council, I urge you to not add to these families’ difficulties by passing this Bill as currently drafted and let the burden of proof remain where it rightfully belongs – with the Districts. Please also allow special education students the opportunity to complete their school year and educational program, regardless of when they turn twenty-one.

Thank you for your consideration.