

Hayes, Katherine

From: Gerri Fleming [gerri.fleming@gmail.com]
Sent: Sunday, March 22, 2009 11:04 PM
To: Friis, John
Cc: Gerri Fleming
Subject: testimony

Dear Mr. Friis,

Just yesterday, I learned that there is proposed legislation designed to shift the burden of proof in due process hearings from school districts on to the party bringing suit. This will, no doubt, have a chilling effect on a parent's ability to file for due process when the school district fails to provide an appropriate program for the child with special needs. Many parents will eschew the decision to file and will choose instead to a) supplement their child's programming privately, b) unilaterally withdraw their child from public school and place that child in a private school, or even worse, c) do nothing because the aforementioned choices are simply not options. Given the state of our current economy, "c" will continue to be the default for many families. A child's right to a "free and appropriate public education" will be denied.

Recent case law has already taken away the right of parents to recoup expert witness fees, even when they are the prevailing party in a due process complaint against a school district. So when a hearing officer finds a school district to be negligent in providing an appropriate program for a child with special needs, there is no longer that provision in the law that allows for the injured party to be made whole again. A parent may not recoup the fees he/she may have paid to an advocate, an educational consultant, a Board Certified Behavior Analyst, a speech and language pathologist, a neuropsychologist, etc. needed to prove the merits of their case. These are all out of pocket expenses that the parents must incur in order to have a chance at winning. It is now part of the cost of securing a "free and appropriate" education.

Already, parents weigh the cost of bringing suit versus simply paying for the necessary therapy for their children. If a family is lucky enough to have the discretionary money to fund therapy, they usually do so, rather than engage in legal proceedings. These are families who are already under a great deal of stress as they have a child with special needs. The last thing they may want to do is to add to their own stress. However, this supposed "free and appropriate public education" is hardly free if parents are supplementing with private tutoring or therapy sessions. And if they have to hire an advocate, educational consultant or fund a private neuropsychological evaluation to secure an appropriate school program for their child, then it is not free. Due process complaints are relatively rare, because many parents just pay for what is needed for the child rather than sue a school district. Parents have shown that they are willing to waive their rights, up to a point, if they can just pay for what the child may need. More parents are funding private supplemental education for their public school child just to make it work than there are parents who file for due process. In my experience, a parent files for due process. if and only if, the situation has become so dire, so untenable for the child, that there is simply no other choice.

IDEA, in its current iteration, also imposes a two year statute of limitations. Parents may only request two years of compensatory education even if the school district failed to provide an appropriate program for more than two years. And, there are no damages to be won in these cases...one gets a year's tuition for a year lost--this does not take into account the social, emotional or academic injury to the child.

There is generally a loss of self-esteem, there may be depression and it may take longer than a year to remediate a year of abject neglect. But there is no provision in the law for that. One year for one year...and one can only go back as far as two years.

The playing field is hardly level, as school districts have at their disposal tax dollars to fight these battles, whereas parents do not. Parents have their family budgets which only allow for so much. They do not have lawyers on staff or on retainer as many towns and school districts do. In fact, if a parent is to hire an attorney, s/he must produce the funds in advance because this is not an area of law where attorneys take clients on a contingency basis. This is a costly proposition for parents on many different levels. Parents do not want to sue a school district. They may have other children in the school and fear the ramifications for their other children. They are uncomfortable with the adversarial relationship. There is an intense emotional toll exacted upon a family when the decision to file for due process is made. I have yet to see it entered into lightly. Parents do so because they have to; because their child with special needs is so terribly vulnerable and his/her rights are being denied. And when these rights are denied, this child's future is at stake. This is not hyperbole. A child's ability to be a functioning, contributing member of society hinges upon the quality of programming s/he receives in school. (And for those who are merely motivated by the bottom line...you can pay now, by allowing for accountability on the part of school districts to do the job they are paid to do...of you can pay later, when these kids do meet their potential, are unemployable, dependent, and a drain on the economy.)

Schools are already failing these children--look at the scores on standardized tests. Don't make it any easier for them to waste our tax dollars. We need to keep schools accountable...and if fear of litigation does so, then I say, bring it on! It keeps car manufacturers from making defective and unsafe cars...it keeps chemical companies from dumping toxic waste into our groundwater...it keeps drug companies from releasing unproven and potentially harmful medications. A little bit of healthy fear on the part of those with power keeps us all just a little bit safer. Allowing an entity to operate unchecked is to invite an abuse of power...don't do so where children are involved.

This provision of shifting the burden of proof onto the party bringing suit will only serve to chip away the fundamental right of children with special needs to be educated appropriately. It will allow schools and towns to abdicate their responsibility to those self-same children. School districts are keenly aware that only a handful of parents ever sue; passing this bill will curtail this even further. Don't let this happen. Already, parents cannot get back their expert witness fees, and they are limited to, at best, two years of compensatory education for their child--with no damages awarded, whatsoever. A society is judged by the way it treats its most vulnerable citizens...let us cast a favorable light on Connecticut's society. Preserve the law as it currently stands. Do not shift the burden of proof to the party bringing suit...as it will only serve to devastate our most vulnerable citizens--those without political power--children with special needs.

Thank you for your time and careful consideration in this matter.

Regards,
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