House of Representatives

File No. 664

General Assembly

February Session, 2010

(Reprint of File No. 433)

Substitute House Bill No. 5425
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 28, 2010

AN ACT CONCERNING SPECIAL EDUCATION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 10-76i of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) There shall be an Advisory Council for Special Education which shall advise the General Assembly, State Board of Education and the Commissioner of Education, and which shall engage in such other activities as described in this section. **[**Said**]** On and after July 1, 2010, the advisory council shall consist of the following members: (1) **[**Two**]** Eight appointed by the Commissioner of Education, (A) six of whom shall be (i) the parents of children with disabilities, provided such children are under the age of twenty-seven, or (ii) individuals with disabilities, (B) one of whom shall be an official of the Department of Education, and (C) one of whom shall be a **[**representative of an institution of higher education in the state that prepares teacher and related services personnel**]** state or local official responsible for carrying out activities under Subtitle B of Title VII of the McKinney-

Vento Homeless Assistance Act, 42 USC 11431 et seq., as amended from time to time; (2) [two] one appointed by the Commissioner of Developmental Services [, one of whom] who shall be an official of the department; [and one of whom shall be a person with disabilities or a parent of such a person;] (3) [two] one appointed by the Commissioner of Children and Families [, one of whom] who shall be an official of the department; [and one of whom shall be a person with disabilities or a parent or foster parent of such a person;] (4) one appointed by the Commissioner of Correction who shall be an official of the department; (5) [four] five who are members of the General Assembly who shall serve as nonvoting members of the advisory council, one appointed by the speaker of the House of Representatives, one appointed by the majority leader of the House of Representatives, one appointed by the minority leader of the House of Representatives, one appointed by the president pro tempore of the Senate and one appointed by the minority leader of the Senate; (6) [three] one appointed by the president pro tempore of the Senate [, one of whom shall be a member of the Connecticut Association of Boards of Education, one of whom shall be a member of the Connecticut Speech-Language-Hearing Association and one of whom shall be a person with disabilities or the parent of such a person] who shall be a representative of an institution of higher education in the state that prepares special education and related services personnel; (7) [two] one appointed by the majority leader of the Senate [one of whom shall be a person with disabilities or the parent of such a person and one of whom shall be a regular education teacher] who shall be a public school teacher; (8) [four] one appointed by the minority leader of the Senate [, one of whom] who shall be a representative of a vocational, community or business organization concerned with the provision of transitional services to children with disabilities; [, one of whom shall be a member of the Connecticut Association of Private Special Education Facilities and two of whom shall be persons with disabilities or the parents of such persons;] (9) [three] one appointed by the speaker of the House of Representatives [, one of whom] who shall be a member of the Connecticut [Association of School Administrators and] Council of

Special Education Administrators and who is a local education official; [, one of whom shall be a person with disabilities or the parent of such a person and one of whom shall be a member of the literacy coalition and a person with disabilities or the parent of such a person;] (10) [two] one appointed by the majority leader of the House of Representatives [, one of whom] who shall be [a person working in the field of special-education-related services and one of whom shall be a person with disabilities or the parent of such a person] a representative of charter schools; (11) [four] one appointed by the minority leader of the House of Representatives [, two of whom shall be persons with disabilities or the parents of such persons, one of whom shall be a member of the Connecticut Association of Pupil Personnel Administrators and an administrator of a program for children who require special education, and one of whom shall be a special education teacher; (12) eight] who shall be a member of the Connecticut Association of Private Special Education Facilities; (12) one appointed by the Chief Court Administrator of the Judicial Department who shall be an official of such department responsible for the provision of services to adjudicated children and youth; (13) seven appointed by the Governor, all of whom shall be [persons with disabilities or parents of such persons and one of whom shall also be associated with a charter school] (A) the parents of children with disabilities, provided such children are under the age of twenty-seven, or (B) individuals with disabilities; and [(13)] (14) such other members as required by the Individuals with Disabilities Education Act, 20 USC 1400 et seq., as amended from time to time, appointed by the Commissioner of Education. Appointments made pursuant to the provisions of this section shall be representative of the ethnic and racial diversity of, and the types of disabilities found in, the state population. The terms of the [present] members of the council serving on the effective date of this section shall expire on June 30, [1998] 2010. Appointments shall be made to the council by July 1, [1998] 2010. Members shall serve two-year terms, except that members appointed pursuant to subdivisions (1) to [(4)] (3), inclusive, [and (12)] of this subsection whose terms commenced July 1, [1998] 2010, shall serve

three-year terms and the successors to such members appointed pursuant to [said] subdivisions (1) to (3), inclusive, of this subsection shall serve two-year terms.

(b) [Said] The advisory council shall elect annually its own chairperson and other officers as deemed necessary. The council shall meet at least once during each calendar quarter and at such other times as the chairperson deems necessary or upon the request of a majority of members in office. The State Board of Education shall meet at least annually with the council to review the state plan for the provision of special education. A majority of the members in office, but not less than ten, shall constitute a quorum. Any member who fails to attend fifty per cent of all meetings held during any calendar year shall be deemed to have resigned from office. The member appointed by the Commissioner of Education who is an official of the department shall meet with and act as secretary to the advisory council. Members of the advisory council shall serve without compensation, but shall be reimbursed for all reasonable expenses incurred in the performance of their duties. The Department of Education shall provide secretarial and administrative assistance to facilitate the activity of the advisory council. The Department of Higher Education shall appoint a liaison person to the advisory council.

(c) The advisory council shall: (1) Advise the Department of Education of unmet needs in educating children with disabilities and on the administration of the provisions of sections 10-94f to 10-94k, inclusive; (2) review periodically the laws, regulations, standards and guidelines pertaining to special education and recommend to the General Assembly and the State Board of Education any changes which it finds necessary; (3) comment on any new or revised regulations, standards and guidelines proposed for issuance; (4) participate with the State Board of Education in the development of any state eligibility documents for provision of special education; (5) comment publicly on any procedures necessary for distributing federal funds received pursuant to the Individuals with Disabilities Education Act, 20 USC 1400 et seq., as from time to time amended; (6) assist the

120 Department of Education in developing and reporting such data and
121 evaluations as may be conducted pursuant to the provisions of said
122 act; (7) report to the General Assembly not later than January fifteenth
123 in the odd-numbered years and not later than February fifteenth in the
124 even-numbered years, concerning recommendations for effecting
125 changes in the special education laws; and (8) perform any other
126 activity that is required by the Individuals with Disabilities Education
127 Act, 20 USC 1400, et seq., as from time to time amended.

128 Sec. 2. (NEW) (*Effective July 1, 2010*) (a) On and after July 1, 2012, a
129 local or regional board of education that is responsible for providing
130 special education and related services to a child, pursuant to section
131 10-76a of the general statutes, shall provide applied behavior analysis
132 services to any such child with autism spectrum disorder if the
133 individualized education plan or plan pursuant to Section 504 of the
134 Rehabilitation Act of 1973 requires such services. (1) Such services shall
135 be provided by a person who is, subject to the provisions of subsection
136 (b) of this section, (A) licensed by the Department of Public Health or
137 certified by the Department of Education and such services are within
138 the scope of practice of such license or certificate, or (B) certified by the
139 Behavior Analyst Certification Board as a behavior analyst or assistant
140 behavior analyst, provided such assistant behavior analyst is working
141 under the supervision of a certified behavior analyst. (2) A teacher or
142 paraprofessional may implement the individualized education plan or
143 plan pursuant to Section 504 of the Rehabilitation Act of 1973
144 providing for such applied behavior analysis services, provided such
145 teacher or paraprofessional is under the supervision of a person
146 described in subdivision (1) of this subsection. For purposes of this
147 section, "applied behavior analysis" means the design, implementation
148 and evaluation of environmental modifications, using behavioral
149 stimuli and consequences, including the use of direct observation,
150 measurement and functional analysis of the relationship between the
151 environment and behavior, to produce socially significant
152 improvement in human behavior.

153 (b) If the Commissioner of Education determines that there are

154 insufficient certified or licensed personnel available to provide applied
155 behavior analysis services in accordance with the provisions of
156 subsection (a) of this section, the commissioner may authorize the
157 provision of such services by persons who: (1) Hold a bachelor's
158 degree in a related field; (2) have completed (A) a minimum of nine
159 credit hours of coursework from a course sequence approved by the
160 Behavior Analyst Certification Board, or (B) coursework that meets the
161 eligibility requirement to sit for the board certified behavior analyst
162 examination; and (3) are supervised by a board certified behavior
163 analyst.

164 (c) Nothing in this section shall be construed to require the inclusion
165 of applied behavior analysis services in an individualized education
166 plan or plan pursuant to Section 504 of the Rehabilitation Act of 1973.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*from passage*	10-76i
Sec. 2	*July 1, 2010*	New section

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 12 $
Education, Dept.	GF - Cost	Up to $5,000

Note: GF=General Fund

Explanation

Section 1 of the bill revamps the Advisory Council for Special Education and is not anticipated to result in a fiscal impact.

Section 2 of the bill requires school districts, beginning July 1, 2012, to use only behavior analysts licensed or certified in accordance with the bills requirements to provide applied behavior analysis for students with autism spectrum disorders. This provision could result in a potential cost to local and regional boards of education, as well as the vocational technical high school system, as schools will now be more restricted in whom they are able to hire to perform these services, and it is anticipated that certified or licensed personnel could be more costly. It is estimated that the cost difference would be minimal, and would not begin until FY 13.

Additionally, the State Department of Education (SDE) will require additional resources of up to $5,000 to develop, print, and disseminate materials on the new requirements of behavior analysts to local and regional school districts. The minimal cost could be incurred in FY 12, as SDE must notify local and regional school districts prior to July 1, 2012.

House "A" makes a change to the Advisory Council for Education,

which does not result in a fiscal impact. House "A" also strikes **Section 2** of the underlying bill and replaces it with a new section, which does not result in a fiscal impact.

The Out Years

State Impact:

Agency Affected	Fund-Effect	FY 13 $	FY 14 $	FY 15 $
State Technical High Schools	GF - Potential Cost	Minimal	Minimal	Minimal

Note: GF=General Fund
*These figures have been adjusted for inflation at a rate of 2%

Municipal Impact:

Municipalities	Effect	FY 13 $	FY 14 $	FY 15 $
Local and Regional School Districts	STATE MANDATE - Potential Cost	Minimal	Minimal	Minimal

There is a potential minimal cost to local and regional school districts as well as the vocational technical high school system, beginning in FY 13, associated with the hiring of licensed or certified behavior analysts.

OLR Bill Analysis
sHB 5425 (as amended by House "A")*

AN ACT CONCERNING SPECIAL EDUCATION.

SUMMARY:

Starting July 1, 2012, the bill requires school districts to use only behavior analysts licensed or certified in accordance with its requirements to provide applied behavior analysis for students with autism spectrum disorders who require the services (1) according to a special education individualized education program (IEP) or (2) under an educational plan established under section 504 of the federal Rehabilitation Act of 1973. The bill also establishes standards for people who may provide applied behavioral analysis services if the education commissioner finds there are not enough licensed or certified personnel available.

The bill also revamps the Advisory Council for Special Education by:

1. reducing its statutorily specified membership from 37 to 30 and updating those members' qualifications;

2. requiring appointees to reflect the ethnic and racial diversity and types of disabilities found in the state;

3. requiring the terms of all current council members to expire on June 30, 2010;

4. requiring that, for terms starting July 1, 2010, the appointees of the commissioners of education, developmental services, and children and families serve initial terms of three years and thereafter serve the same two-year terms as the other

appointees.

*House Amendment "A" (1) specifies that a teacher or paraprofessional may implement the behavior analysis services under the supervision of a licensed or certified person; (2) increases the revised membership of the Special Education Advisory Council from 29 to 30 by adding an additional, nonvoting legislator member appointed by the House speaker; and (3) makes technical changes.

EFFECTIVE DATE: Upon passage for the changes in the advisory council and July 1, 2010 for the applied behavior analysis provisions.

BEHAVIOR ANALYSIS SERVICES

Special Education and Section 504 Plans

Both Connecticut and federal law require each child eligible for special education, including children with autism, to receive an individualized educational program appropriate for his or her needs (20 USC 1400 et seq; CGS §§ 10-76a-10-76i). A child with a disability who is not eligible for special education may be covered by § 504 of the federal Rehabilitation Act of 1973, a law that protects the rights of people with disabilities in programs, such as public education, that receive federal financial assistance.

School districts must have plans to address the special educational needs of students who qualify under these federal laws. Starting July 1, 2012, this bill requires that, if a student with autism spectrum disorder has a plan that requires him or her to receive applied behavioral analysis, the school district responsible for providing special education and related services to the student must use a licensed or certified behavior analyst to provide the services. It specifies that it cannot be construed to require that applied behavior analysis be included in IEPs or § 504 plans.

The bill expressly permits teachers or paraprofessionals to implement behavior analysis services required under an IEP or 504 plan, if they are supervised by a person who licensed or certified as the

bill requires.

The bill defines "applied behavior analysis" as designing, implementing, and evaluating modifications in the student's environment to produce a socially significant improvement in his or her behavior. Applied behavior analysis uses behavioral stimuli and consequences including direct observation, measuring, and functional analysis of the relationship between environment and behavior.

Certified Behavior Analysts

Under the bill, to qualify to provide these services on and after July 1, 2012, a person must be (1) licensed by the Department of Public Health, certified by the State Department of Education, and the services must be within the scope of the license or certificate or (2) certified by the Behavior Analyst Certification Board as a behavior analyst or assistant behavior analyst. Assistant behavior analysts must work under a behavior analyst's supervision.

If the education commissioner determines that there are not enough certified or licensed behavior analysts to provide the required services, the bill allows the commissioner to authorize people with the following qualifications to provide them, if they are supervised by a board-certified behavior analyst:

1. a bachelor's degree in a related field and

2. at least (a) nine hours of course work in a course sequence approved by the Behavior Analyst Certification Board or (b) course work meeting the requirements to sit for the behavior analyst certification exam.

ADVISORY COUNCIL FOR SPECIAL EDUCATION MEMBERSHIP

The bill revises the membership of and appointments to the Advisory Council for Special Education (see BACKGROUND). Table 1 shows the current and proposed council membership. In addition to the specified members, both the current law and the bill also require the council to include any other members the federal special education

law requires.

Table 1: Current and Proposed Special Education Advisory Council Membership

APPOINTING AUTHORITY	CURRENT COUNCIL		PROPOSED COUNCIL	
	Members	Qualifications	Members	Qualifications
Education commissioner	2	• 1 State Department of Education (SDE) official • 1 representing a higher education institution with a teacher preparation program	8	• 6 parents of children with disabilities under age 27 or people with disabilities • 1 SDE official • 1 state or local official responsible for carrying out requirements of federal law concerning education of homeless children
Department of Developmental Services (DDS) commissioner	2	• 1 DDS official • 1 person with disabilities or parent of such a person	1	DDS official
Department of Children and Families (DCF) commissioner	2	• 1 DCF official • 1 person with disabilities or parent or foster parent of such a person	1	DCF official
Department of Correction (DOC) commissioner	1	None	1	DOC official
1 each appointed by House majority and minority leaders and Senate president pro tempore and minority leader	4	Legislators as voting members	4	Legislators as nonvoting members
Senate president pro tempore	3	• 1 CT Assn of Boards of Education • 1 CT Speech-Language-Hearing Assn • 1 person with disabilities or parent	1	Representing higher education institution prepared special education and related services personnel
Senate majority leader	2	• 1 person with disabilities or parent • 1 regular education teacher	1	Public school teacher
Senate minority leader	4	• 1 representing vocational, community, or	1	Representing vocational, community or business

APPOINTING AUTHORITY	CURRENT COUNCIL		PROPOSED COUNCIL	
	Members	Qualifications	Members	Qualifications
		business organization providing transitional services to children with disabilities • 1 member of CT Assn of Private Special Education facilities • 2 people with disabilities or parents		organization providing transitional services to children with disabilities
House speaker	3	• 1 local education official who is a member of the CT Assn of School Administrators • 1 person with disabilities or parent • 1 member of the literacy coalition and either a person with disabilities or parent	2	• A person who is both a Council of Special Education Administrators member and a local education official • A legislator who is a nonvoting member
House majority leader	2	• 1 person working in the field of special education related services • 1 person with disabilities or parent	1	Charter school representative
House minority leader	4	• 2 people with disabilities or parents • 1 member of the CT Assn of Pupil Personnel Administrators who is an administrator of a program for children requiring special education • 1 special education teacher	1	Member of CT Assn of Private Special Education Facilities
Governor	8	Persons with disabilities or parents with one who is also associated with a charter school	7	Persons with disabilities or parents of such persons under age 27
Chief Court Administrator	0	NA	1	Judicial Department official responsible for providing services to adjudicated children and youth

BACKGROUND

Advisory Council for Special Education

The council's duties are to:

1. advise SDE on unmet needs of children with disabilities and administration of the SDE's surrogate parent program;

2. periodically review special education laws, regulations, and guidelines and recommend necessary changes to the State Board of Education (SBE) and the General Assembly;

3. comment on new or revised regulations, standards, or guidelines before they are issued;

4. participate with SBE to develop state eligibility documents for providing special education;

5. comment on procedures necessary for distributing federal special education funds;

6. help SDE in developing and reporting data and evaluations required by the federal law; and

7. report annually to the General Assembly concerning recommended changes in special education laws and carry out other duties required under the federal special education law.

COMMITTEE ACTION

Education Committee

Joint Favorable Substitute
Yea 32 Nay 0 (03/19/2010)

Appropriations Committee

Joint Favorable
Yea 48 Nay 1 (04/19/2010)