

**TESTIMONY OF ATTORNEY DEBORAH G. STEVENSON BEFORE THE JUDICIARY COMMITTEE**

**3/3/10**

I represent the Avoletta family. I urge you to vote "No" to H.J. NO. 6, a resolution of the Claims Commissioner to dismiss the claims of Joanne, Peter and Matthew Avoletta, and instead, order the relief requested.

Peter and Matthew Avoletta have physical disabilities caused and exacerbated by exposure to bacteria, mold, and generally unsafe conditions in the Torrington Public School District caused by continued water intrusion. Peter suffered irreversible lung damage. Matthew suffered asthma, among other things. Their pediatrician and their allergist both recommended that the children not attend the Torrington School District because continued exposure to the unsafe conditions there would have caused the children further illness.

The Avolettas informed the school district of the doctors' recommendations and asked for help in resolving the issue, including placement of the children at another safe public school or private school. The Torrington School District, however, refused to acknowledge the doctors' recommendations that continued placement at the Torrington schools was medically contraindicated. Instead, the District threatened the parents with truancy if the children failed to attend. The parents had no choice but to place the children in a safe school setting in a private school in Waterbury.

The parents continued their requests to the Torrington School District, and to the State Department of Education for relief, to no avail. Each year since that time, the parents have had to make additional unilateral placements for the children in private school in order to keep them safe and healthy.

The Avolettas were not the only ones affected by the moldy conditions and poor indoor air quality at the Torrington School District. Other children and teachers suffered adverse reactions as well, including one young student who had to have one of her lungs removed, and a teacher who suffered several permanent ailments.

At one point, the Attorney General stepped in. Among other things, he told the State Education Commissioner that boards of education are "agents of the State in carrying out the educational interest of the State", that Conn. Gen. Statute Section 10-220(a) "requires" boards of education to provide an appropriate learning environment, proper maintenance of facilities, a safe school setting, and the implementation of indoor air quality programs that provide for ongoing maintenance of school buildings. The Attorney General also told the Commissioner that the State Department of Education is "required to ensure that local school districts are carrying out the statutory mandate to educate students in a safe setting" and that the statutes "unequivocally indicate that it is the responsibility of the State Department of Education to hold local school districts accountable for creating appropriate indoor air quality programs, for properly maintaining their school facilities, and for remedying any situations that potentially compromise the safety of the setting where students are educated." The Attorney General told the Commissioner of Education that the Commissioner's "responsibility includes holding the Torrington Board of Education accountable on an ongoing basis for fulfilling the statutory mandate to provide a safe school setting."

Unfortunately, the State Department of Education failed to hold the Torrington School District accountable for remedying the situation that potentially compromised the safety of the setting where the Avoletta children were to be educated. The parents seek relief for that failure.

In addition, the State violated the Avoletta's right under the Connecticut Constitution, article first, sections 8 and 20, and article eighth, section 1. Under those provisions the State has an affirmative

obligation to provide Peter and Matthew Avoletta with a free appropriate public education in a safe school setting without discrimination due to their physical disabilities.

The Avolettas seek just and equitable compensation for all the wrongs committed by the state against their children, including those that continue at this time.

The Avolettas urge you to reject the Claims Commissioner's improper dismissal of their complaint as untimely filed for a number of reasons. The Claims Commissioner failed to take into consideration the fact that the Avoletta's were entitled under federal and state statutes to make a new formal request for a free appropriate public education in a safe school setting without discrimination due to their disability each year, and did so. Each time the State failed to hold the Torrington School District accountable for remedying the situation that potentially compromised their safety, the Avolettas should be able to apply for compensation. At the very least, when they applied for compensation on May 2, 2007, they should have been able to claim relief for wrongs occurring from May 2, 2006 to the present time. Their claim should not have been summarily dismissed.

In addition, the Claims Commissioner should not have dismissed the claim when the complaint involves a violation of the Connecticut Constitution for which the time limitation does not, and/or should not, apply. The complaint involves a novel claim and an important issue of public policy about which the General Assembly should provide guidance for the benefit of many other children similarly compelled to attend moldy and unsafe public school buildings throughout this state. The State, by its failure to hold the Torrington School District accountable, continues to evade responsibility for its failures, its discrimination, and its violation of the fundamental rights of disabled children under the Connecticut Constitution.

Neither the respondent, nor the Claims Commissioner, can point to any legal authority that would buttress any argument that children who are discriminated against, year after year, by the State, in violation of their fundamental State Constitutional rights, are precluded from seeking compensation by way of a complaint filed with the Claims Commissioner due to any time limitation.

Even assuming arguendo that there exists such legal authority, the General Assembly should review the complaint to establish public policy concerning what time limitations should apply when continuing violations occur. This is especially true for this vulnerable population who are compelled by statute to attend public school or who are faced with a Hobson's choice of the threat of truancy when they abide by the recommendations of board certified doctors not to attend school because to do so would cause them greater physical harm. Faced with this decision, to deny this vulnerable population an opportunity to seek relief from the Claims Commissioner, effectively leaves them without any redress for their grievances.

In the alternative, the Avolettas seek a decision vacating the decision of the Claims Commissioner and granting the relief requested due to compelling equitable circumstances that would serve an important public purpose. The public policy of this State cannot be to encourage local School Districts to consistently and repeatedly deny to disabled children their fundamental right under the Connecticut Constitution to a free appropriate public education in a safe school setting when their physicians indicate that the children could suffer harmful physical effects by continued attendance. A clear message must be sent to the State that these actions must cease, that those injured must be compensated, and that public school buildings must be properly maintained to safeguard the health and well-being of all physically disabled children. Under these circumstances, it is incumbent upon the General Assembly to make an express finding that these compelling circumstances necessitate the granting of the relief requested.

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