

Testimony of Andrew A. Feinstein, Esq.
On Raised Bill 5425
March 8, 2010

Raised Bill 5425 proposes four changes in the laws governing the provision of special education to Connecticut children with disabilities. My Mystic law practice is devoted exclusively to representing children with disabilities in securing appropriate educational services. Hence, I have both interest in and knowledge about the subject matter of Raised Bill 5425.

Section 1 reduces the size of the Advisory Council for Special Education, which is required by the Individuals with Disabilities Education Act. **I take no position on Section 1** but note that the Advisory Council has not played any sort of serious or constructive role in special education policy in the state. Part of the problem is that the Council houses two competing factions that cannot agree. And part of the problem is that the State Department of Education (SDE) takes a fairly hands-off approach to how local school boards administer their special education programs. Hence, an advisory panel can have little impact on how special education is administered where the panel provides advise to an agency that takes a diffident approach.

Section 2 requires that local school boards utilize skilled and credentialed personnel to provide Applied Behavior Analysis (ABA) services to students with autism who have such services specified in their individualized education plans (IEPs). This certification requirement is entirely consistent with the requirements already in law for therapists who provide speech and language services, occupational therapy, and physical therapy. Connecticut leads the nation in requiring human service providers to be trained and certified. Providing ABA services to children with autism is a complicated and highly skill-based endeavor. Students with autism ought to have the support and guidance of trained and skilled individuals. For these reasons, **I support Section 2** of Raised Bill 5425, recommending it as sound legislation worthy of enactment.

Section 3 is not sound legislation and should not be enacted. **I oppose Section 3.** Section 3 would transfer the burden of proof in special education due process hearings from the school district to the parents. A school district is required to offer a free appropriate public education to each child with a disability. The due process hearing is an opportunity for the parent to challenge the educational placement and program offered by the district. The United States Supreme Court has set the bar very low for what constitutes a free appropriate public education. Moreover, the school district controls all the information about the student's performance in school. Requiring the parent to carry the burden of proof makes an effective challenge to the school district's program and placement virtually impossible. There is no discovery in due process hearings. In Connecticut, the parent must present his or her case first. Hence, this legislation would saddle parents with the impossible task of proving that a proposed program or placement is inappropriate without full information on the student's performance and without the opportunity to understand the board's position. It is the case that the United States Supreme Court ruled that the burden of proof is on the party bringing the hearing, absent state regulation to the contrary. Attorney General Blumenthal has wisely advised that the Connecticut regulation placing the burden on the school board remains in effect. Amending the law as proposed in

Section 3 of Raised Bill 5425 would eliminate critical parental rights and would ensure that thousands of Connecticut students with disabilities receive an inferior education.

Section 4 changes the financial responsibility of a student on an IEP who transfers between districts during the course of a school year from the receiving district to the sending district. This is a serious issue for school districts, made much more serious by the irresponsible cuts in excess cost reimbursement proposed in Governor Rell's budget and by the extremely limiting regulations on eligibility for excess cost reimbursement implemented by the State Department of Education a year ago. For most parents, whether the program is paid by the sending or by the receiving district is of no consequence. The reality is, however, that a district will only become seriously invested in a child's program if it is paying the bill. Keeping the financial responsibility with the district that designed the program but no longer has the student under its jurisdiction attenuates the responsibility of the district that has jurisdiction. Hence, although this change should not make an enormous difference to my clients, **I oppose Section 4.**

Thank you for your consideration of my views.

Respectfully Submitted,

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