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Testimony of
David Scata, Past President of ConnCASE
Education Committee
3/08/2010
Raised Bill No. 5425
AN ACT CONCERNING SPECIAL EDUCATION

Senator Gaffey, Representative Fleischmann, and Distinguished Members of the Education Committee; my name is David Scata, Past President of ConnCASE . ConnCASE represents over two hundred public school administrators of special education in the state of Connecticut.

I would first like to extend my appreciation to the committee to hear the opinion of ConnCASE and to thank the committee for hearing our concerns the past few years on a variety of issues related to special education.

I am here today to give testimony on Raised House Bill 5425

Raised Bill 5425 *"An Act Concerning Special Education"*

Sec. 4. Section 10-76d of the 2010 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(h) For any school year commencing on and after July 1, 2010, if a child who has received special education and related services transfers from one school district to another school district after October first, the local or regional board of education under whose jurisdiction such child attended school or in whose district the child resided prior to such transfer and that provided special education pursuant to the provisions of sections 10-76a to 10-76g, inclusive, shall be financially responsible for the reasonable cost of special education and related services provided to such child until June thirtieth of the school year of such transfer. Such local or regional board of education shall be eligible for reimbursement of such special education costs pursuant to section 10-76g for such child. If a child transfers from one school district to another school district after October first, and such child was not receiving special education and related services prior to such transfer but the local or regional board of education of the school district to which such child has transferred determines that such child requires special education and related services, such school district shall be financially responsible for the reasonable cost of special education and related services provided to such child.

I am unclear to the intent of the language but my if my interpretation is clear, the preceding language drafted in the bill is not only confusing but would if enacted be

almost impossible to monitor fiscally and monitor the implementation of a student's IEP. What district personnel would be responsible for ensuring the fidelity of the students IEP, the previous school from where the student transferred or the receiving school? Would the receiving school have the same level of commitment or ownership knowing that the previous school was both fiscally and educationally responsible for the remainder of that school year? Does the regulations regarding residency which are very clear, now need to be rewritten in order to enact the new language proposed? As you can hear from my testimony the language is unclear yet the implications would be significant.

Sec. 3. Subdivision (1) of subsection (d) of section 10-76h of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(d) (1) <u>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.</u>

I wish to express our support for Section 3 of the bill, which makes a critical change to place the burden of proof on the party requesting the hearing in a special education due process hearing. This change would bring Connecticut in line with the language of the federal Individuals with Disabilities Education Act (IDEA) and with the decision of the United States Supreme Court in the case of <u>Schaffer v. Weast</u>, 546 U.S. 49 (2005).
As pointed out by the United States Supreme Court, in the absence of some compelling reason to the contrary, the same burden of proof can and should apply to plaintiffs in special education due process hearings. In fact, in most states, the plaintiff in the case, usually the parent does bear the burden of proof, and this has not caused any major problems for parents in enforcing their rights under IDEA in those states where this is the rule.

While we understand that previously parents and their advocacy groups claim that placing the burden of proof on the plaintiff in a due process hearing is unfair because the school district has access to the information needed by the parent to pursue his or her claim, I must point out that this same argument was made to the United States Supreme Court and was rejected by a majority of the Court. The argument was rejected precisely because of the number of procedural safeguards contained within the IDEA that level the playing field for parents. Parents have the right to review all educational records concerning their child, and the school district may not discard or destroy educational records without notification to the parents. Parents have the right to request an independent educational evaluation at the expense of the school district, and the school district must provide an outside independent expert to evaluate the child and provide an opinion that may potentially contradict the previous recommendations of the school district for that child.

When a hearing is requested, school districts must answer the charges made by the parents in writing, and must disclose to the parents all evaluations and information that the district intends to rely upon at the hearing, giving the parent access to all of the school

district's information. These protections, according to the United States Supreme Court, ensure that the school district has no informational advantage over the parents and also ensures that the parent has access to expert witness testimony at the expense of the school district.

The Supreme Court also pointed out, not insignificantly, that placing the burden of proof on the school district to prove that the program offered to the student is appropriate has the effect of presuming that the program is inappropriate unless and until the school district proves otherwise. This runs completely contrary to the structure and intent of the IDEA itself.

Thank you,

David Scata

Past President
ConnCASE