

Testimony of Christina D. Ghio
in opposition to
Section 3 of HB 5425, An Act Concerning Special Education

Education Committee
March 8, 2010

My name is Christina D. Ghio. I am an attorney in private practice with a focus on representing children, including children with special education needs. I have over a decade of experience representing children in special education, child welfare, and juvenile justice matters.

I write today to **oppose Section 3 of HB 5425, An Act Concerning Special Education**. By placing the burden of proof on the party requesting the hearing, this provision shifts the burden in special education due process hearings from the school to, in most cases, the parent. Such a statutory change would have a dramatic negative impact on children with disabilities, leaving them in educational programs that are not adequate to meet their needs.

The Individuals with Disabilities Education Act (IDEA) was passed because Congress found that the educational needs of children with disabilities were not being met. 20 U.S.C. § 1400(c)(2). It is the obligation of the state and local educational agencies to provide a free appropriate public education to all children with disabilities, referred to as FAPE. 20 U.S.C. § 1412 (a)(1).

Current regulations of the State Department of Education place the burden of proving the appropriateness of the child's program or placement on the school district. See CONN. AGENS. REGS. 10-76h-14. HB 5425 is a dramatic and unnecessary departure from this long-standing regulation.

Some may argue that such a change is necessary under *Schaffer v. Weast*, 546 U.S. 49 (2005), that is simply not the case. While the *Schaffer* decision held that the burden of proof in administrative proceedings under IDEA is placed on the party seeking relief, it explicitly declined to address the issue of whether states can choose to place the burden on schools. Thus, states are free to continue to choose to place the burden on school districts.

Following the decision, Dr. Berry J. Sternberg, then Commissioner of the State Department of Education, issued Circular Letter C-9 in which she acknowledged that *Schaffer* does not require Connecticut to change its regulations, or the law, regarding the burden of proof. Commissioner Sternberg stated that "the standard in Connecticut articulates a valid state policy that school districts are in a better position to defend the appropriateness of an IEP."

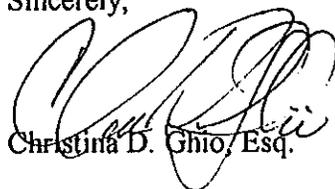
Indeed, placing the burden of proof on school districts is not only a valid state policy; it is the best state policy because it recognizes the significant imbalance of power that exists in the area of special education. As Commissioner Sternberg explained in Circular Letter C-9 "[d]istricts are in control of following the procedural requirements of the IDEA and of planning and offering

an IEP which provides a child with an opportunity to derive meaningful educational benefit, the two criteria courts look at to determine whether an IEP is appropriate." School district administrators, teachers, and staff are trained in the requirements of IDEA. With very few exceptions, school district employees conduct the evaluations of the child. The planning and placement team meetings, at which the child's individualized education plan is developed, are conducted by the school and, generally speaking, the only person not employed by the school district is the parent. When the district offers an individualized education plan, that plan goes into place unless the parent files a due process request. When hearings do occur, almost all of the witnesses called upon to testify are employees of the school district. Finally, school districts are represented by counsel but most parents simply cannot afford to hire an attorney. Placing the burden of proof on the school district, as current regulation does, simply recognizes this reality. Section 3 of HB 5425 would reverse the current regulation, place the burden on parents, and result in the denial of appropriate educational services to children with disabilities.

Finally, because the very same proposal being made in HB 5425 was made last year in the context of fiscal relief to municipalities, it is important to address the suggestion that this would save money. To the extent that any cost savings would be derived, they would be achieved only by creating such an imbalance that parents abandon any effort to obtain appropriate educational services for their children and by depriving children with disabilities of necessary educational services they would receive under our current regulations. In my view, that is simply unconscionable, even in the most desperate of fiscal times.

For all of these reasons, I urge you to reject Section 3 of HB 5425.

Sincerely,



Christina D. Ghio, Esq.