

March 6, 2010

Christopher Lent
12 Randazzo Road
Columbia, CT 06237

Re: Raised H.B. No. 5425, An Act Concerning Special Education, Reg. Session 2010

Dear Senator Gaffey, Representative Fleischmann, and Members of the Education Committee:

I'm writing to object to the provision in Raised H.B. No. 5425 which would place the burden of proof on the party requesting the hearing. Although a complaining party typically bears the burden of proof, the Individuals with Disabilities Education Improvement Act is atypical from other civil rights legislation in that an affirmative, beneficiary-specific obligation is placed on the providers of public education. To alter settled Connecticut law would not only be unfair and place an onerous burden on families advocating for a "free appropriate public education," it would likely result in unintended consequences, such as increased costs to the State.

According to the Connecticut State Department of Education, two hundred and fifteen (215) Special Education Hearings were scheduled during the 2008-2009 school year.¹ A summary of those hearings is as follows:

- 215 Special Education cases during the 2008-2009 school year
- 186 of the cases filed by parents/students, or 86 ½ %
- 29 of the cases filed by school districts, or 13 ½ %
- 143 of the cases were settled by the parties, or 66 ½ %
- 58 of the cases were withdrawn or dismissed, or 27%
- 10 of the cases the school district was prevailing party, or 4 ½ %
- 4 of the cases the parent/student was prevailing party, or < 2%
- 60 of the cases were pro se, or 28%

By shifting the burden of proof on the party requesting the hearing, which statistics indicate more than eight-six (86%) percent of the time it's the parents, school districts would have less incentive to settle the disputes before the hearing commences. If more disputes require full resolution before the Hearing Officer, a greater financial burden could be placed on the State. For example, special education hearings are on an accelerated time line, so additional Hearing Officers may be necessary to ensure due process within the mandated time constraints.

School districts are in a far better position to demonstrate that they've fulfilled its statutory obligations. Current law already places the burden of production on the party requesting the hearing, so to shift the burden of proof as well onto the moving party, which is almost always the

¹ Connecticut State Department of Education, Special Education Hearings, March 6, 2010, available at <http://www.sde.ct.gov/sdc/cwp/view.asp?a=2626&q=320712>.

parent, would be unfair. As the statistics reveal, families have prevailed less than two percent (2%) of the time when their disputes are adjudicated before a Hearing Officer. In contrast, school districts have prevailed in more than twice the number of hearings. By no means does this data suggest parents have the upper hand since the districts currently have the burden of proving the appropriateness of the child's program or placement (or the district's proposed program or placement).

I respectfully request the members of the Education Committee reconsider the efficacy of altering settled law when statistics fail to suggest inequities in the special education procedural rules requiring legislative action to redress.

Sincerely,

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