

Regarding HB 5425: Support Section 2 and Defeat Section 3

March 7, 2010

Members of the Education Committee:

My name is Jennifer Laviano, and I am an attorney in private practice in Sherman, Connecticut. My entire practice is dedicated to the representation of children and adolescents with disabilities throughout the special education process. I write to you regarding HB 5425.

First, I wish to address Section 3 of the proposed bill, which seeks to alter our State law regarding the Burden of Proof in Special Education Due Process Hearings. This same language was proposed not a year ago, and I wrote and testified at that time as well, and was very appreciative that the Committee made the right decision not to overturn a Connecticut regulation which has been in place for over a decade, and which places the Burden of Proof that a Free and Appropriate Public Education has been offered on the school district whose obligation it is to educate the child who is the subject of the Hearing.

To be clear, the language which is proposed does not state that the Burden of Proof would now rest with Parents, but please make no mistake: that is exactly what it means. This is because cloaking the language in a pretense of making the Burden of Proof fall on the "moving party" functionally places that Burden on Parents of children with disabilities, who initiate the vast majority of the Due Process Hearings. The rare cases in which school districts initiate the Hearing almost always surround whether or not the child requires a certain evaluation, NOT whether the child is receiving an appropriate program and proper services.

The IDEA and our Connecticut special education laws mandate that each local educational agency provide a Free and Appropriate Public Education to each child identified for special education and related services. If a Parent disagrees with those services, the mechanism which exists for them to challenge the program is the Due Process Hearing. While many school districts claim that litigation is rampant in this field, the numbers do not bear this out. I have confirmed with the CT State Department of Education just this week that of the over 200 cases which were filed last year (2009) only 7, that's **SEVEN**, proceeded to a full Decision. Seven cases in the whole year, throughout the entire State, were fully adjudicated. The rest were either withdrawn or dismissed, usually because the parties find a way to work out their disputes, but also because often, parents just give up.

The average parent can't afford experts or a lawyer. They face in a Due Process Hearing a school district which has in its employ special education teachers, regular education teachers, school psychologists, speech pathologists, physical therapists, social workers, not to mention often doctoral level administrators, all of whom can testify on the district's behalf. The district also maintains all of the child's education records, and has the benefit of having several staff members who spend all of the school day with the child, and who regularly communicate with

one another. The Parents, on the other hand, are often going on their instinct that their child is not receiving an appropriate program, and often they have been denied or restricted in their requests to observe their child in school. They may have had one or two meetings with the child's team all school year. As to the child's disability and what kind of intervention is necessary to remediate it, the Parents are going on maybe what they've read in books or online, if at all. Usually, they have no idea how to interpret the assessments done by the district. The Parent is almost certainly operating under the disadvantage of never having gone through the process before, whereas many Special Education Directors have been through the process on several occasions throughout their career, and they have received formal training both on the law and the process before. Sometimes, school districts elect to even have the Board's attorney handle the case for them, against a parent who is proceeding pro se. Finally, of course, the Parent is challenged by the fact that they are highly emotionally invested in the outcome of the case, since it is their child's education and future at stake. Add to this the anxiety of having to miss work in order to be present at the Hearings.

All of these factors and more exist now, today, in Connecticut, EVEN WITH the Burden of Proof resting with the school district. Does it seem remotely fair to add to the Parents' disadvantage by giving them the Burden of Proof as well? Does it make sense to do so over seven cases a year that can't be resolved amicably?

I urge the Committee to vote against the proposed change to Section 3, and leave the Burden of Proving that an appropriate education was offered where it properly lies: with the educational agency charged with the responsibility of providing it.

Next, I turn to Section 2, which seeks to establish a basic requirement of certification for individual who profess to be able to provide behavior analytic services to children with disabilities when their IEP calls for it. To be clear, nothing in this section is requiring that such services be mandated for any children; only that, when they are offered, the IEP must include an individual who is properly credentialed to provide it.

On so many occasions, I have been contacted by Parents whose children require ABA services, and whose IEPs so indicate, but on whose team there is no individual who is properly trained to actually implement this part of the child's program. As a result, not only is the child not receiving an appropriate program, but the entire team, including the parents and the educators, have no idea whether ABA actually works, because the student isn't really receiving it. Future decisions are made without proper intervention ever having been given, and the child loses out on precious time within which to gain necessary skills. I strongly urge the Committee to vote in favor of Section 2.

I thank the Committee very much for its time and consideration of these important issues.