

*THE LAW OFFICES OF JENNIFER LAVIANO, LLC  
76 ROUTE 37 SOUTH  
SHERMAN, CONNECTICUT 06784*

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Dear Senator Gaffey, Representative Fleischman, and Education Committee Members:

First, I would like to thank you for the opportunity to provide additional information following my testimony regarding HR 5425, Section 3. Further, having now testified before you on three separate occasions, always ending up towards the very late part of the evening, I would like to express both my appreciation and admiration for the way in which the Committee, and the Chairs, make Connecticut's citizens feel heard and respected.

I have provided the United States District Court's Decision in the M. v. Wilton matter separately. For the Committee's information, and put simply, a Recommended Ruling is provided when the Court, by agreement of the parties, asks a United States Magistrate Judge to determine the outcome of a case. They do so in a "Recommended Ruling," which is then either adopted by the Judge assigned to the case, or not. In the M. matter, the Recommended Ruling was, indeed, adopted by the Hon. Janet Bond Arterton, and was not appealed by Wilton to any higher court. Therefore, I believe it is clear that our regulation has indeed withstood judicial scrutiny since the United States Supreme Court's Schaeffer decision. If there are additional pleadings, documents, or information in this regard which the Committee requires, I will be happy to provide it.

As to suggestions which I may have for ways in which our Due Process system in Connecticut could be improved, I respectfully submit the following ideas, none of which are fully fleshed out, but which I believe might result in fewer Due Process Hearing filings. For the Committee's information, while Connecticut can offer greater protection to children with disabilities than the IDEA requires (indeed, the Burden of Proof regulation is an example of that), it cannot provide less. The easiest way to think of it is that the federal law is a floor, not a ceiling. I have been considering this as I suggest the following:

1. Improvements to the Advisory Opinion process:

Connecticut has a mechanism known as an Advisory Opinion. It is entirely voluntarily by agreement between the parents and the district. It is like a mock trial of the case. The idea, which was borrowed from Massachusetts, is that both sides get a sense from a Hearing Officer of whether their case has merit BEFORE they both spend a lot of time and money on a full Hearing.

The process is a good concept, but many people don't use it because it is so very informal; it's not on the record, the Hearing Officer doesn't issue a written opinion, there are no objections permitted, etc. I think if this process were made slightly more formal, but still was shorter and more streamlined, more attorneys for both sides would use it, AND both pro se parents and districts who didn't want to spend the money on counsel would use it as well.

Ways in which this process could be improved that I believe would entice more parents to use it instead of a Hearing would be: a) allow the parties to *mutually agree* on how much time they would like the process to take, instead of significantly limiting how long it can go. I don't believe either parent's attorneys or district attorneys would want more than a day, but they should have the option to use a full day if they felt it was necessary for that case. c) Have the Hearing Officer issue a written Decision. It wouldn't have to be more than a page or two, and it could be agreed that if the parties proceed to a Hearing anyway, it is not able to be used in evidence in that Hearing. b) Allow parents to recover reasonable attorneys' fees if they participate in an Advisory Opinion and they prevail. I know many parents' attorneys don't use the process because, like Mediation, there is no way a parent can recover attorney's fees if the Hearing Officer agrees with them and it results in a settlement. In this case, we would be talking about probably on average five thousand dollars' risk to the parties, rather than tens of thousands.

## 2. Better Training of Hearing Officers

For a historical perspective, I believe it was at some point during the Rowland administration that the previous language as to training of Hearing Officers in CT was changed. Previously, Hearing Officers had to have some background in special education, and then the State provided ongoing training on the law. That is no longer the case. The result is a panel of lawyer Hearing Officers, some of whom have absolutely no background knowledge in special education. That doesn't mean they are bad Hearing Officers, but when I speak with Board attorneys on this subject, and hearing the concerns expressed by special education administrators, I think we're in agreement that a lot of time and money could be saved if Hearing Officers were more knowledgeable about special education. I think if you included both the Parent bar and the school district bar in this discussion, we could come up with suggestions for how to better train Hearing Officers, so that the parties don't have to spend thousands of dollars on experts to explain, for example, how an IQ is obtained. Attempts at understanding how to improve this process have been made many times, but I think many are concerned it's not resulting in changes. Perhaps allowing Parents' attorneys and Board attorneys to alternate on a bimonthly basis selections of who should

provide training to the Hearing Officers at their next Hearing Officer training, and on what subject, would be useful.

### 3. Attorneys Fees Recovery at Mediation

For the same reasons identified in section 1 above, many parents' attorneys don't utilize the Mediation process because we are routinely told by the school district's lawyers that they will not pay any money towards fees at Mediation. This is sometimes after the parents have been asking for a service or program for many years, and it is only after they have spent thousands of dollars on a lawyer that the district is willing to do it. Worse, sometimes we are talking about a family who has been begging for an outside evaluation to determine if their child has a disability, they have been refused, and when they hire the lawyer to go to the PPT, the district agrees to it. Then, the evaluation results show that the child does, indeed, have a disability, and the district then agrees at Mediation to identify the child for an IEP. It does not make parents, or Parents' attorneys, want to resolve the dispute short of a Hearing when they are refused any fees at the Mediation level, even when it's clear that the Parents' position was correct. It really is an incentive to file and litigate. It flies in the face of the "Free" part of a Free and Appropriate Public Education to which children are entitled by law, and further ensures that only children whose parents have means can obtain justice. If reasonable attorneys' fees were explicitly permitted at Mediation, I am confident it would result in more resolution and fewer filings for Due Process. I have had *numerous* cases where we have gone to Mediation in good faith, the district has agreed to provide everything but attorneys' fees, then we file for a Hearing, and only THEN does the Board agree to pay the fees...which of course are by then much higher! The only people who benefit from this are the lawyers for *both* sides.

I hope these suggestions are useful to the Committee. I plan to speak with other special education attorneys to see if they have other ideas, but thought these would be a good place to start. If there is any additional information which the Committee requires, I will be more than happy to provide it.

Respectfully submitted,

Jennifer D. Laviano