

HB 5425:

Support Section 2:

I am writing to ask that you support Section 2 of Raised Bill 5425 which will require public schools to hire Board Certified Behavior Analysts (BCBA), Board Certified Assistant Behavior Analysts working under the supervision of a BCBA, or other professional licensed or certified by either the State Department of Education or Department of Public Health whose scope of practice includes behavior analysis when Behavior Analysis is part of an Individualized Education Plan (IEP).

Simply put, this bill will ensure that our children receive behavior analysis from qualified professionals, only when a child in our public school system has behavior analysis as part of their individualized education plan (IEP). Said services must be provided by someone who is licensed by the Department of Health or certified by the State Department of Education whose scope of practice includes behavior analysis or by a Board Certified Behavior Analyst (BCBA) or a Board Certified Assistant Behavior Analyst supervised by a BCBA.

This bill does not require that behavior analysis be part of a child's IEP but that it must be provided by a qualified person. BCBA is recognized credential in many states. The Behavior Analyst Certification Board, Inc. (BACB®) is a nonprofit corporation which oversees this certification. The Behavior Analyst Certification Board's credentialing programs are accredited by the National Council for Certifying Agencies in Washington, DC. It is important that school districts have clear direction from the State who meets the qualifications necessary to provide these services. Hiring people who are not qualified to provide these services put school districts at risk of parent lawsuits.

Oppose Section 3:

I am writing to object to Section 3 of Raised Bill #HB 5425 that establishes a statutory burden of proof lies with the party requesting a special education hearing. Given that the vast majority of actions are initiated by parents of disabled children, this change is in effect shifting the burden to these parents. The current law is well settled and states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP). The current law makes good sense because the school districts are in control of the records, staff, the experts, and have unlimited access to all the information about the program they are providing. Further, the districts can use their own staff as expert witnesses. In contrast, the parents have limited access to school programs, observations and are not educational experts. As it stands currently there is an imbalance of power; the districts are in a far better position with great numbers of staff and records to defend the programs they deliver vis-à-vis the the parents, who have limited resources given the need to raise their disabled child.

How would the proposed change affect parents who have children with disabilities in Connecticut? It stacks the deck more heavily in favor of school districts. Historically, the majority of hearings reviewing the delivery of special education services to students with disabilities, our most vulnerable population, are already decided in favor of the school districts. This bill proposes a drastic 180 degree change of the burden of proof in special education due process cases. It would make due process hearings excessively costly and would be an insurmountable challenge for parents, creating a situation in which the families could not have a fair hearing with any reasonable chance of prevailing.

Note that the Office of Protection and Advocacy for Persons with Disabilities opposes this section. I draw your attention to their testimony on identical legislation in 2009 HB 1142 (did not pass) dated March 23, 2009.

Last, any argument that this change is warranted by a Supreme Court case *Shaeffer v Weast* is specious. The holding in this case does not require that states change the burden of the proof. It is entirely appropriate under the law to leave the status quo unchanged.

Thank you for your consideration.

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