

Raised Bill No. 5425
Testimony
Submitted to the Education Committee

Section 1 - (10-76i)
Proposed Change re: Appointees To SAC
Special Education Advisory Council (Panel)

REJECTION URGED to Section 1 - (10-76i)

Summary:

The changes proposed to Section 1 of Raised Bill No. 5425 do not conform with the purpose of such changes stated as: "... *reducing the number of members to make it consistent with federal law.*" These changes if enacted would instead turn current statutory compliance with federal law, however minimal, into explicit noncompliance.

These changes really do nothing to address the long-standing problems of empty appointments and appointed members failing to attend meetings, or the reasons for such problems. This proposal to decrease membership and representation of stakeholders to Connecticut's advisory panel under the IDEA, is not in the best interest of the public, individuals with disabilities, or their parents.

Explanation:

SAC provided, or should be fulfilling, an important statutory obligation. The change in Section 1, to reduce stakeholder representation in the State Advisory Council for Special Education to make it "consistent" with federal law actually does just the opposite and if approved might instead violate the Individuals with Disabilities Act at:

- 20 U.S.C. Sec. 1412(a)(21)(B)(i) Membership (Parents)
- 20 U.S.C. Sec. 1412(a)(21)(B)(ii) Membership (Individuals with disabilities)
- 20 U.S.C. Sec. 1412(a)(21)(B)(iii) Membership (teachers;)
- 20 U.S.C. Sec. 1412(a)(21)(C) Special Rule

The IDEA requires that Connecticut's SAC be comprised of parents, individuals with disabilities, and teachers. Further, under IDEA's Special Rule, a **majority** of the members **shall be** individuals with disabilities or parents of children with disabilities.

Current state law seems in compliance with the IDEA concerning membership, albeit at bare minimums for some requirements. However, there is a long-standing failure to fill appointments to existing positions and where appointments were made, appointees fail to attend. Because of failures to fill positions, and appointee failure to attend meetings there is effective non-compliance with state and federal law for the mandatory participation and representation at SAC meetings. When holding meetings without required representation, SAC can not and is not fulfilling its obligations under the IDEA thereby putting substantial federal funds at risk.

The changes proposed would serve to violate the assurances Connecticut makes to the

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federal government under IDEA by permitting Connecticut to have only one teacher appointed to SAC whereas more than one teacherS (Plural) are required under the IDEA. (See at 20 U.S.C. Sec. 1412(a)(21)(B)(iii)Membership. There are times when there were NO teachers actually appointed to SAC. One is not sufficient and positions must be filled with appointees actually serving at meetings. While existing Connecticut law, if not practice, complies with this requirement, the proposed changes would not comply.

Further proposed changes would allow for 25 total VOTING positions with parents and persons with disabilities holding 13 seats. (There would be additional four non-voting proposed positions excluded in this count. Were Connecticut to add these 4 positions to the total position count, the resulting number of parent positions would then not be adequate.) Proposed changes only provide the barest minimum representation of parents and persons with disabilities. Proposed changes also do not comply with required representation by teachers.

Whoever initiated these proposed changes to the legislature clearly demonstrates intent to restrict, decrease, or deny the participation by parents, individuals with disabilities and their teachers to prohibitively low levels. Clearly, the legislature and SAC needs to address failures inherent in Connecticut's SAC meetings.

Past SAC meetings in which there were not at least two teacher(s) present or when parents and persons with disabilities did not constitute the majority present violated IDEA requirements for representative membership participation on the SAC panel. Any discussions and votes taken at meetings without the required representation were in violation of IDEA (and perhaps the FOIA) with the result all decisions and recommendations presumably would be void. Connecticut's receipt of federal funds is conditional upon Connecticut's compliance with the IDEA including requirements for proper representation on the SAC panel that conducts public business according to federal law. (See 20 U.S.C. Sec. 1412(a) In General.) The SAC panel could not lawfully fulfill its duties under 20 U.S.C. Sec. 1412(D) Duties when meeting in violation of IDEA requirements.

Connecticut provided statements assuring the federal government that Connecticut is in full compliance with the IDEA and thereby entitled to receive substantial funds the IDEA provides to states that in fact do comply. Connecticut may have made incorrect statements and assurances regarding its compliance with the IDEA that could trigger a whole host of unpleasant consequences.

I think Connecticut's Special Education Advisory Council(Panel) should be taking the lead in demanding corrections of these violations and in notifying the Federal Government of such problems and under-representation of; persons with disabilities, parents of persons and of children with disabilities, and teachers of such persons with disabilities. All of who are being unfairly and unlawfully denied seats at the table when federal law requires participation in the level required in federal code.

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It is apparent the Department of Education, through its Bureau of Special Education has assisted and directed the SAC to engage in these and other violations including what appears are violations of Connecticut's Freedom of Information Act for meetings and records.

Existing state statues at 10-76(i)(b) appear to allow a quorum defined simply as just ten members. It is not clear how all requirements in IDEA, especially for parents and persons with disabilities would lawfully comprise such majority within a quorum of just ten.

Summary:

Proposed changes to statue alleges to make SAC consistent with federal law. State statute are currently consistent. The proposed changes to current law would make SAC inconsistent. There is no need and no requirement in IDEA to reduce the number of appointments. There is reason and need to INCREASE membership at SAC meetings by persons with disabilities, their parents, and teachers. Public participation is also an unaddressed concern as the public is unaware of these meetings and does not attend for various reasons.

Clearly, the legislature and SAC needs to address the failures of Connecticut's SAC. These proposed changes do not address these failures but makes a bad situation worse.

Interestingly the purpose and duties of SAC is to help Connecticut comply with federal and state law requirements. That SAC chooses to ignore it own present obligations and seeks to allow future violations under statutory sanction is disturbing to say the least.

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Section 2 - (10-76i) – New Section
Applied Behaviour Analysis services

Minor clarification requested to Section 2(b)

Summary:

Stated purpose is: *“to require boards of education to provide applied behavior analysis services to certain special education students.”* While the IDEA already requires these services, some districts refuse compliance with IDEA, so there is a pressing need for passage of this section. New Section at (b) allows the Commissioner to waive section (a) without time limit upon such waiver. There are clarifications necessary of section b upon the improvements section a promises to Connecticut children.

Explanation:

This new Section 2 provides for Applied Behaviour Services under the IDEA by a BCBA while providing a means to waive this requirement. It is this waiver only, which raises concern.

The concern with the bill is that the waiver Section b, effectively, would allow the Department of Education (its Commissioner) to provide less or poorer quality services to children with special needs than is currently required under the IDEA, which now requires BCBA services without exception or waiver.

The proposed bill made grammatical changes to draft recommendations of this bill by Attorney General Richard Blumenthal to state:

“... the commissioner may authorize the provision of such services by persons who:

(1) Hold a bachelor's degree in a related field;

(2) have completed

(A) a minimum of nine credit hours of coursework from course sequence approved by the Behavior Analyst Certification Board, or

(B) coursework that meets the eligibility requirement to sit for the board certified behavior analyst examination; and

(3) are supervised by a board certified behavior analyst.”

Logically, item (1) is associated with the next item (2) with the implicit conjunction AND. However one might also interpret there is an implicit conjunction OR. The difference of joining (1) with (2) with either (and) or with (or) is significant. Is clarity necessary?

Under this waiver provision at Section b. the Commission is given authority to instead assign an individual with a degree in some “related” field without explaining what the term related field might suggest. The legislature should express its intent for the meaning of related field, as followers of state law cannot impose their own meanings upon

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unexpressed legislative intent.

New Section 2(a) does not come in effect until July of 2012 more than two years after passage. This bill already provides provisions for delay with Commissioner waivers in Section b. A delay of two years is unreasonable and unnecessary to the children who would be harmed by further delaying their existing rights under the IDEA to BCBA services.

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Section 3 - (10-76h(d)(1)
Burden of Proof in Due Process

REJECTION URGED to Section 3 (10-76h(d)(1) Burden of Proof

The proposal to place the burden of proof upon parents filing due process to first somehow prove the district's record of program and services is not appropriate before they could present their own claims. This proposal appears every year hidden in various bills and every year the Education Committee receives overwhelming testimony causing it to properly reject this proposal. Testimony this year once again overwhelmingly asks that the legislature reject this ill-considered and wrongful proposal allegedly in response to a Supreme Court decision. My question is why does this proposal always reappear and who institutes this perennial request certainly not taxpayers, teachers, students or their parents.

The proposed change seek to place the burden of proof from the district onto parents/guardians in a due process matter at least when parents file, which is almost the entirety of cases brought. This perennial request is not from parents, teachers, or persons with disabilities but sought by school board attorneys and the Connecticut Association of Boards of Education an organization substantially funded and seemingly run by school board attorneys with public funds from school Boards. This proposal serves school board attorneys primarily a group hardly in need of assistance especially when compared to the needs of children and their parents.

Connecticut does not take complaints from parents nor will it investigate the very few complaints it does accept. The IDEA, Section 504, and the Americans with Disabilities Act all require that there be complaint processes in place for aggrieved children and their parents so they might easily, quickly, and inexpensively correct problems at the local level where they are more easily resolved. Yet, the required complaint processes are often not available at all to children and parents at the local level. At the state level, such complaint opportunities are rarely made available or accessible and when they are, complaints are poorly investigated if at all. Having a usable complaint process available to children and their parents would negate most need for Connecticut's far more expensive Due Process system. An effective complaint process would save the state and local school districts substantial sums along with savings to parents. Clearly, the state Department of Education and school attorneys are not concerned with saving money or accepting grievances. While making effective complaint processes available to children and their parents would be a win win situation, sadly, Connecticut refuses federal obligations to make any meaningful complaint process available. That must change.

The far more expensive and burdensome upon all parties, process of Due Process is out of reach and unavailable to the vast majority of children and their parents, a well-known

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fact schools take full cognizance and advantage of when denying children their rights to an education. Hearing officers are highly biased and partial in favor of school districts and the state of Connecticut, their employer by contract. Not surprisingly, due process decisions after wasting enormous funds and destroying many families overwhelmingly favor school districts. The bias is needlessly redundant given the enormous resources schools have at their disposal to oppose this last and only option by children with special needs to obtain an appropriate education. Schools hide their legal bills from parents and the public. Perhaps the legislature might investigate fees by school attorneys or why only two firms control about 88% of all Connecticut school districts.

School board attorney Michelle Laubin representing the Connecticut School Attorneys Council provided this Education Committee written testimony on this section. Her testimony contains misleading statements for passage. Misleading statements to Connecticut Legislators by a Connecticut attorney is cause for concern. Especially so, as this particular attorney is currently before the Connecticut Bar disciplinary council for alleged violations of Connecticut's Attorney code of conduct in several other matters.

This is the typically unfair, brutal, no holds barred legal climate parents must face.

I understand this proposal comes from Connecticut Association of Boards of Education and has unsurprising support from school attorneys. One has to ask if CABA, reporting itself to be a 501(c) corporation, is using its tax-exempt resources instead to benefit its donors, (private school Attorneys) by lobbying the legislature for laws that appear to primarily benefit CABA'S for-profit attorney donors.

Perhaps an investigation is warranted concerning at the least, misuse of tax-exemption, ethics, and lobbying issues.

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Further Comments Related to Raised Bill 5424

The Education Committee is well aware of pervasive problems with Connecticut's special education services, corrupt due process protections at the local level, lack of complaint processes, and the refusal to exercise oversight responsibilities at the state level.

I would like to suggest the legislature begin public hearings and investigation into the cause of these problems that have little relationship to economic fluctuations.

Connecticut's children are being denied their educational rights and not being prepared to live independent productive lives though they clearly ought to be. Connecticut's Department of Education is denying these children their rights to an education along with their civil and due process rights. Who is profiting if not the children?

Public exposure and debate by the legislature of these pervasive and long standing problems would be very helpful to all stakeholders, but especially Connecticut's children and future adults. My opinion is that one by-product would be substantial corruption would be uncovered with potential savings possible.

Testimony to the Education Committee,

Respectfully Submitted,

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