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TESTIMONY OF CONNECTICUT LEGAL SERVICES, INC. IN SUPPORT OF H.B. 6433, AN ACT CONCERNING ADULT EDUCATION AND SB 1038, AN ACT CONCERNING INDIVIDUALIZED EDUCATION PROGRAMS

Good afternoon Senator Stillman, Representative Fleischmann, and esteemed members of the Education Committee. My name is Michelle Fica and I am a staff attorney in the Children at Risk unit of Connecticut Legal Services (CLS). The Children at Risk unit at CLS provides legal representation to low-income families who have children with disabilities, primarily to assist in obtaining appropriate educational and behavioral health services.

I am here to testify in support of H.B. 6433, An Act Concerning Adult Education and SB 1038, An Act Concerning Individualized Education Programs.

H.B. 6433 would end the practice of requiring students to withdraw from school to attend adult education during their period of expulsion. Under current law, school districts are obligated to offer alternative educational opportunities to the majority of children during their school expulsion period.[1] For children over the age of sixteen, districts are allowed to offer adult education as that opportunity.[2] Additionally, school districts may only expel children for up to one calendar year.[3]

Unfortunately, districts throughout Connecticut are requiring that students, who attend adult education because it is their only opportunity for an education during their period of expulsion, withdraw from school.

My client's story is just one example of how this occurs. When I first met "George", he was an unusually bright fifteen year old sophomore who had recently been expelled for one year. He was getting two hours of tutoring a day as his alternative educational placement, but was concerned because the tutoring was set to expire on his sixteenth birthday. After that, his only option

[1] Conn. Gen. Stat. §10-233d(d).
[2] Id.
[3] Conn. Gen. Stat. §10-233a(d).

was to attend adult education. When his mother went to the adult education program, they told her that they would not accept George until he withdrew from school. At that point, she called me. Despite my being a lawyer and having numerous contacts with the district, it took me almost a year to convince them that adult education during a year of expulsion does not mean expulsion to adult education forever. During that entire year, George worried that his mistake at age fifteen would deprive him of a normal high school experience and his dream of attending college.

George's district is not the only one that has this erroneous interpretation. George's and other districts in Connecticut cite Conn. Gen. Stat. § 10-69(a) as their authority, which ambiguously does not address the situation of adult education during a period of expulsion. Numerous adult education programs even state, directly in their websites, that a prerequisite of attendance is proof of withdrawal from high school.

This practice is unlawful because it effectively expels children for more than one calendar year. It is harmful because it creates tremendous obstacles for high-risk children who desperately need and want the benefits of attending high school. In response to my request for guidance on this issue, the State Department of Education issued a letter confirming that the practice is contrary to current state law.[4]

H.B. 6433, An Act Concerning Adult Education, solves this problem by amending Conn. Gen. Stat. §10-233d(d), which describes alternative educational opportunities during a period of expulsion. The proposed language prevents school districts from requiring children to withdraw from school just so that they can access their alternative educational opportunity. This clarification is essential because it brings adult education, when used for the limited situation of expulsion placements, into compliance with our expulsion law.

To prevent children like George from being pushed out of their education, **CLS strongly urges the Education Committee to support H.B. 6433.**

We also urge the Education Committee to support SB 1038, An Act Concerning Individualized Education Programs, which would require school districts to provide parents with the evaluations done to determine eligibility for special education 5 days before the initial PPT meeting. Federal law requires that parents are afforded the opportunity for meaningful participation in the special education process. It can be overwhelming for a parent to attend a PPT meeting for their child who is struggling in school and to see for the first time complicated evaluations that are often many pages long. The parents, who are always greatly outnumbered in the room by school administrators and teachers, are not given the time to read the evaluations or consult with their own experts. In order for parents to understand and meaningfully participate in

[4] Letter from Daniel Murphy is attached.

the decision of whether their child is eligible for special education, parents must be given the opportunity in advance of the meeting to review the evaluations, consult with the school staff and other experts if necessary to understand the evaluations. Connecticut Legal Services attorneys routinely request such evaluations in advance in order to prepare for the PPT meetings. From our experience in trying to obtain the evaluations, it is clear that the evaluations are not normally completed or shared very much in advance of the PPT meetings. This bill would change that practice and greatly assist parents in being able to participate meaningfully in the eligibility determination.

Thank you for your time and consideration.

STATE OF CONNECTICUT

DEPARTMENT OF EDUCATION

January 18, 2011

Attorney Michelle Fica
Connecticut Legal Services
85 Central Avenue
Waterbury, CT 06702

Re: Student Discipline

Dear Attorney Fica:

This is in response to your letter addressed to me dated January 3, 2011, regarding the placement of an expelled student in adult education as the alternative educational opportunity provided by a local or regional board of education subsequent to expulsion proceedings held pursuant to Connecticut General Statutes Section 10-233d (hereinafter "Conn. Gen. Stat.). While your letter asks for my opinion in order to clarify the implementation of expulsion laws, please be advised that the following is not a legal opinion of the State Department of Education but is merely a response addressing the understanding by the Division of Legal and Governmental Affairs pertaining to the pertinent laws concerning your inquiry.

According to the scenario contained in your letter, a student is expelled from high school shortly before his/her sixteenth birthday. The decision of the board of education states that after the student's sixteenth birthday, for the remaining balance of the expulsion period, the alternative educational opportunity provided by the board changes to placement in adult education. The parent is told that the student must be withdrawn from the school he/she attended when expelled before the student can access adult education. When the student has completed the expulsion period expressed in the decision of the board of education and seeks to return to the school, the school district administration informs the parent that the student cannot re-enroll in the high school due to the withdrawal from school by the parent.

While the scenario addresses the continuation of an alternative educational opportunity to a student who turns sixteen years of age during the period of expulsion, the gravamen of your inquiry concerns the alternative educational opportunity provided in the form of placement in the adult education program for the balance of the expulsion period. The continuation of the alternative educational opportunity is in fact being provided by the board of education.

Historically, Public Act 95-303, An Act Concerning School Safety, amended Conn. Gen. Stat. Section 10-233d in a number of ways in order to address truancy, suspension and expulsion, alternative education and notification of arrested students. A student expelled for the first time between the ages of sixteen to eighteen and who wishes to continue his or her education shall be offered an alternative educational opportunity. Offering an alternative educational opportunity to other expelled students who are at least sixteen years of age is permissive. The amendment established the option of "...placement of a pupil who is at least sixteen years of age in an adult education program operated pursuant to Conn. Gen. Stat. Section 10-69...." Conn. Gen. Stat. Section 10-69(a) was amended to define an "Adult" as a "student enrolled in school who was assigned to an adult class pursuant to subsection (d) of Section 10-233d".

The amendments established in Public Act 95-303 addressed special education students. Pursuant to Conn. Gen. Stat. Section 10-76(i), for all students receiving special education and related services under Conn. Gen. Stat. Section 10-76a, a planning and placement team shall convene to determine whether the misconduct was caused by the student's disability. If the misconduct was caused by the disability, the student shall not be expelled. If the misconduct was not caused by the disability, the student may be expelled. Whenever a student requiring special education and related services is expelled, the alternative educational opportunity shall be provided during the period of exclusion that is consistent with the student's educational needs.

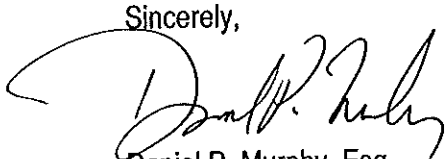
A strict construction of the statutory language is appropriate. Conn. Gen. Stat. Section 10-233d articulates the "placement" of an expelled student at least sixteen years of age in adult education program. Conn. Gen. Stat. Section 10-69(a) articulates that the student is "assigned". Read together, these two laws clearly state that the expelled student is "enrolled" in school while receiving a "placement" or is "assigned" in the adult class. The student is not enrolled in the adult education program pursuant to the laws concerning adult education. This placement is for the period of the expulsion only. Upon conclusion of the expulsion period, the student is eligible to return to the high school as a student in regular standing pursuant to Conn. Gen. Stat. Section 10-233d.

The express law does not contemplate a cessation of enrollment while receiving an alternative educational opportunity. Conn. Gen. Stat. Section 10-233d does not expressly reference nor articulate a procedure for the withdrawal of a student at least sixteen years of age who is offered an alternative educational opportunity. If withdrawal of a student at least sixteen years of age was contemplated, the law would expressly reference the withdrawal procedures established in Conn. Gen. Stat. Section 10-184.

Establishing a prerequisite of the withdrawal of an expelled student at least sixteen years of age as a condition of the provision of an alternative educational opportunity is contrary to the concept of student safety in public schools and the receipt of public school accommodations generally. The laws concerning student discipline by expulsion are intended to exclude a student from school for a specific period of time not to exceed one calendar year. The exclusion of the student during the expulsion period protects both the student and the student body at the high school. The establishment of such a prerequisite would effectively nullify the laws protecting the right of a student to return to school upon completion of the expulsion period.

Therefore, a board of education is not expressly authorized by law to require students or parents to officially withdraw from school as a condition of placement in an adult education program constituting an alternative educational opportunity. The issues of facilitation and the accrual of credit for expelled students placed in the adult education program is a local matter implemented consistent with state law.

Sincerely,



Daniel P. Murphy, Esq.
Director, Division of Legal and Governmental Affairs

DPM:jd