

THE HOME AND SCHOOL ASSOCIATION
of the
Southbury Training School
Southbury, Connecticut
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**Testimony to Program Review and Investigations Committee
on Bill 5036: An Act Implementing the Recommendations of
the Program Review and Investigations Committee**

February 22, 2012

In two staff reports last year on services provided to persons with intellectual disabilities and in Bill 5036, the Program Review Committee has demonstrated that it favors the abdication of the state's historic responsibility of caring for its most vulnerable citizens. This is a policy that will ultimately lead to higher costs and poorer services and care for all clients of the Department of Developmental Services.

We strongly oppose a number of sections of Bill 5036, which we believe are intended ultimately to close all public settings of care for the intellectually disabled in Connecticut, including the Southbury Training School (STS), and to privatize all DDS care and services. It is important to remember that while this care would be privatized, it would still be state funded yet subject to considerably less oversight and regulation than is currently the case.

Our specific concerns about Bill 5036 are as follows:

Section 1a would sharply restrict the placement of any DDS client in any publicly operated group home. Under this provision, those public facilities would be made available largely only to residents being transferred from STS. We believe this provision would reduce choices available to other DDS clients waiting for care and would therefore only worsen the state's waiting list problem for care and services in the community system.

Section 1b would require DDS to compare staffing levels in public and private facilities and to re-assign staff from any public facility in which it finds a higher staffing level than in a "comparable" private facility. This provision is vaguely worded and unworkable at best, and potentially contrary to federal law. The word "comparable" is not defined in the bill. It appears, for instance, that the provision would require DDS to reduce staffing ratios at STS below the Medicaid requirements for Intermediate Care Facilities if DDS were to find a private facility somewhere in the state that was deemed comparable and had lower staffing. The provision says nothing about evaluating the care at the supposedly comparable private facility.

Section 1c would sharply restrict the ability of DDS to hire direct-care staff for any public residential or day programs. This provision appears intended to phase out all public DDS residential facilities and programs through staff attrition. It would mean that while the public group homes, for example, would be largely made available only to residents being transferred from STS (as per Section 1a), those same group homes would be systematically starved of their staffing.

Thus, guardians, who may have agreed to transfer their loved ones from STS on the condition that the transfers were to public group homes, would soon find that those new residences were being phased out of existence. At that point, those guardians would be forced to move their loved ones a second time or stay and accept what would be likely to be new private management, sight unseen.

Sections 2c and 2d appear to be an attempt to speed up the administration's efforts to place STS residents in community-based group homes. Section 2c sets a date of March 1, 2013 to notify all STS guardians of available community placements. The guardians must be provided with DDS and Department of Public Health deficiency reports. If a guardian rejects a placement, the client's interdisciplinary team must "reevaluate the client's needs and make a recommendation for placement at least once annually" (Section 2d).

These two sections raise several concerns for us. First, the requirement for providing deficiency reports may give a misleading picture of the relative quality of STS and private facilities because those deficiency numbers are not adjusted for facility population. Both DDS and DPH, in fact, do not use their deficiency reports to draw comparisons between the care in different residences or types of settings.

We have previously raised a number of concerns about the validity of the use of this deficiency data by the Program Review Committee in its December 2011 report, which concluded that STS and the regional centers are lower in quality than private ICFs. We pointed out to the Committee

that since there are approximately four times as many residents per ICF at STS and the other public regional centers than in the private ICFs, it would be more valid to report the number of deficiencies *per resident* in each setting rather than per ICF.

The Committee staff rejected our argument, stating in a written response that reporting deficiencies per resident would “dilute negative findings” for larger, i.e., public facilities. While that is undoubtedly true, it is also the case that reporting deficiencies per ICF unit, as the Program Review analysis did, tends to dilute negative findings for *smaller*, i.e., private facilities. The Committee staff’s written response appears to us to demonstrate a bias against publicly run facilities that permeates the Committee’s reports and this bill as well.

For the record, we are in favor of providing as much information as possible about community placements to STS families and guardians as long as the information is presented in a meaningful and unbiased way.

Secondly, the requirement in Section 2d of periodic re-evaluations of clients whose guardians have rejected community placements appears intended to give DDS grounds to overrule guardians as primary decision-makers for their wards. We think this is particularly harmful given the language in the *Messier v. STS* court settlement, which states that while guardians at STS shall make the “ultimate decision” about residence, DDS can overrule them if it believes they are not acting in the best interest of their wards.

In our view this language in the Messier settlement contravenes the federal Developmental Disabilities Assistance and Bill of Rights Act, which states that Individuals with developmental disabilities and their families are the “primary decision-makers regarding the services and supports such individuals and their families receive, including regarding choosing where the individuals live from available options...” [42 U.S.C. § 15001 (c)(3)].

Ironically, it seems that those who do not believe in government’s role as a care-giver to our intellectually disabled citizens, nevertheless appear to support governmental intrusion into what should be the private decisions of the families and guardians of these citizens. The DDS, according to the opponents of public care and the signatories to the Messier settlement, is somehow in a better position than an intellectually disabled person’s family members or guardians to determine what is in that person’s best interest. As noted, we believe that view contravenes federal law. For that reason, we have proposed a bill in the current legislative session that states that any guardian or family member who selects STS as a long-term placement for their loved one must be presumed to be acting in the best interest of that resident. Unfortunately, the Public Health Committee leadership has declined to introduce our bill, contending it might conflict with the Program Review Committee’s bill that we are discussing today.

Finally, speeding up the community placement process at STS is unnecessary at best. The governor’s mid-term budget amendment has already projected 40 placements in FY 13, far above the 25 placements projected under a DDS memo we received, which projects the virtual closure of STS in nine years. DDS has already begun closing cottages and

moving residents to larger, more institutional settings on the campus. Several guardians have reported that they feel under pressure to make quick decisions to leave STS.

We would urge the Program Review Committee to take a more even-handed and unbiased approach in reforming the delivery of care and services to people with intellectual disabilities in Connecticut. We believe STS and other public facilities are critical pieces of the overall picture of care in the state. Rather than throwing those pieces out, we would hope both the Program Review Committee and DDS would work with all stakeholders to find ways to use all of these components in the most cost-effect ways possible. We would be more than willing to work with you in such a joint undertaking.

Thank you,

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