The Council of Parent Attorneys and Advocates, Inc.
Protecting the Civil and Legal Rights of Students with Disabilities and their Families

March 4, 2016

Senator Gayle Slossberg
Representative Andrew Fleishmann
Education Committee
Connecticut General Assembly
Hartford, Connecticut 06106

Dear Senator Slossberg and Representative Fleischmann,

We write to express our strong opposition to HB 5552, An Act Concerning Special Education. The bill would undermine the ability of students with disabilities to receive a free appropriate public education, would add substantial new costs and delays to both school boards and to parents, and would directly contradict federal law, specifically the Individuals with Disabilities Education Act (IDEA).

The Council of Parent Attorneys and Advocates (COPAA) is an independent, nationwide nonprofit organization of attorneys, advocates, and parents throughout the country, including over 100 members in Connecticut, who are routinely involved in helping parents to navigate special education and are involved in special education due process hearings throughout the country. COPAA's primary goal is to secure appropriate educational services for children with disabilities, echoing a Congressional finding that "[i]mproving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities." 20 U.S.C. §1400(c)(1) (2006). Children with disabilities are among the most vulnerable in our society, and COPAA is particularly concerned with assuring a free appropriate public education in the least restrictive environment, as the IDEA requires.

HB 5552 amends the existing Connecticut procedures relating to challenging the identification, evaluation or education placement of a student with a disability, contained in C.G.S. 10-76h. The amendment adds a new adjudicative process as a condition precedent to filing a request for a due process hearing. The adjudicator, who is supposed to be neutral, is required to "have significant experience and expertise in the field and areas significant to the review of the special education needs of the child," meaning that most adjudicators will be current or former school board employees. While the parties are invited to mutually agree on an adjudicator, this is unlikely in most contested cases, meaning that the Commissioner of Education will select the adjudicator. As such, the State Department of Education, which works hand in glove with local school boards, will be appointing an adjudicator. Although either party can reject the findings and recommendations of the adjudicator, the finding and recommendations become a part of any subsequent due process hearing. It is not unreasonable to expect that such findings and recommendations will have the same impact as a Magistrate's recommended ruling in federal court, that is, affirmed unless there is overwhelming evidence otherwise.

This is a procedure that severely undermines the rights of parents to secure a free appropriate public education for their children. The adjudication process is profoundly biased in the direct of school boards. And, the procedure itself is time-consuming and very expensive. Although the adjudication is supposed to be concluded in two days, the preparation time for the parent would be extensive. Further, while the IDEA and Connecticut law set strict timelines for due process hearings, HB 5552 sets no timelines and permits a school district to delay consideration and resolution of any due process complaint for a considerable period of time.

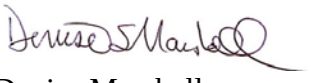
The IDEA, in 20 U.S.C. §1415, sets forth a clear and detailed procedure whereby parents can challenge the actions of a school board in terms of providing a student with a disability a free appropriate public education. States are bound to these federal standards to the extent that they take federal funds, as does Connecticut. While States "are free to elaborate procedural and substantive protections for the disabled child that are more stringent than those contained in the [IDEA]," *Burlington v. Department of Education for Massachusetts*, 736 F.2d 773, 784-5 (1st Cir. 1984), *aff'd* 471 U.S. 359 (1985), States are not at liberty to make the achievement of a free appropriate public education more difficult for students with a disability or their parents. Adding the new burden contemplated by HB 5552 would do exactly that and, as such, would contradict the procedural protections of the IDEA.

We note that Connecticut leads the country in the use of mediation to settle due process disputes. Only about 2% of due process complaints filed in Connecticut go all the way through a hearing to a final decision. So, if this legislation is aimed at reducing the number of due process hearings, it is a solution in search of a problem. Connecticut has averaged fewer than 10 decided cases a year for the last few years, and many of those decided cases came after single day hearings on issues like Independent Educational Evaluations and manifestation determinations. Adjudications, as provided by HB 5552, would, therefore, in many cases, make the process longer and more expensive for both sides.

To a child with a disability, a free appropriate public education is critically important to his or her ability to grow into an independent, contributing member of society. It is a fundamental right that should be vindicated in the way that any other fundamental right is vindicated: through an impartial hearing and an appeal to court. HB 5552 would go a long way to undermining this right.

Sincerely yours,

Selene Almazan
Legal Director



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