



STATE OF CONNECTICUT
OFFICE OF PROTECTION AND ADVOCACY FOR
PERSONS WITH DISABILITIES
60B WESTON STREET, HARTFORD, CONNECTICUT 06120-1551

Testimony before the Education Committee
RE: Raised Bill HB 5552
Submitted by: Colin Milne, Esq.

March 7, 2016

Chairperson Fleischmann, Chairperson Slossberg, and other distinguished members of the Education Committee.

My name is Colin Milne and I am a staff attorney at the Office of Protection and Advocacy for Persons with Disabilities. Thank you for the opportunity to provide written testimony regarding Raised Bill HB 5552.

The Office of Protection and Advocacy for Persons with Disabilities (P&A) is an independent state agency created to safeguard and advance the civil and human rights of people with disabilities in Connecticut. As a part of a nationwide network of protection and advocacy systems, the Office of Protection and Advocacy operates under both state and federal legislative mandates to provide advocacy services to individuals with disabilities. Consistent with federal and state mandates, P&A provides technical assistance, advocacy, and legal representation to students with special education needs and their parents.

The Office of Protection and Advocacy opposes HB 5552's modification of Connecticut's Impartial Special Education Hearing procedures. Protection and Advocacy believes that this bill impermissibly alters the Impartial Special Education Hearing process as contemplated by Part B of The Individuals with Disabilities Education Act (IDEA). The IDEA guarantees parents and students the right to request Impartial Special Education Hearings and ensures procedural safeguards throughout the hearing process.¹ The IDEA also delineates strict timelines that must be followed when an Impartial Special Education Hearing is requested.² Connecticut law follows these timelines and safeguards as proscribed by the IDEA.³ The proposed requirement circumvents the right of parents and students to a file for due process and ultimately delays a final decision with regards to their special education programs. Furthermore, the adjudication statute does not contain any delineated procedural safeguards such as pendency (stay-put). The proposed adjudication may lead to non-compliance with IDEA and the state's loss of Part B funding from the Department of Education.

Families come to P&A frustrated and angry when they feel like their child's needs are not being met by the school. Parents and students will feel disadvantaged by this proposed adjudication as they will see it as just another hoop that they need to jump through to get appropriate services for their children.

¹ See 34 C.F.R. §§ 300.510-516

² See 34 C.F.R. § 300.515

³ See Regs., Conn. State Agencies § 10-76h-7. States may adopt a Single Tier or Two Tier review process for Impartial Special Education Hearings. However, each review must be in compliance with IDEA regulations. Connecticut has chosen a single tier review process. Were this required adjudication be read to create a two tier review process, it would not be in compliance with 34 C.F.R. § 300.514.

Unrepresented parents already fare poorly and are often distrustful of the school. The proposed requirement will only add to the adversarial process, a feeling that the “deck is stacked” against families. Connecticut already utilizes multiple alternative complaint resolution processes. Families can file administrative educational complaints, attend mediation, or file for a non-binding advisory hearing. Finally, the IDEA hearing process itself mandates a resolution meeting. It is clear that families and districts use these alternatives. In 2014, 92 percent of filed due process complaints were either settled, dismissed, or withdrawn. Given these statistics it is not reasonable to add yet another layer to the already robust process.

Finally, the proposed adjudication requirement adds unnecessary and prohibitive costs to the hearing process. Connecticut, already facing budget constraints, will have to fund additional adjudicators. This money could be better used by families and districts to prevent the need for hearings in the first place. More so, this increased financial burden will disproportionately fall on parents and students. First, it is unclear whether a parent may recover attorney fees after the adjudicatory hearing as it appears to be a process outside of IDEA. Second, even if one assumes that a parent may recover attorney fees if they are a prevailing party at the adjudication, parents cannot recoup expert fees. Families must pay for their own expert testimony at hearings. Districts, on the other hand, typically rely on experts already employed by their schools, including school psychologists, special education teachers, and social workers. Many parents will not be able to afford the cost of both an expert and attorney to testify in two separate hearings.

In conclusion, this agency feels that the proposed adjudication impermissibly alters IDEA and significantly disadvantages families. Please feel free to contact me with any questions or concerns. Thank you again for allowing me to submit testimony on behalf of the Office of Protection and Advocacy for Persons with Disabilities.