



March 7, 2016

Re: Raised Bill 5552

Dear Senator Slossberg, Representative Fleischmann, and Members of the Education Committee:

This letter is sent on behalf of Norwalk SPEDPartners. We are a sizeable group of parents and families that have been touched by the special needs of our children. This letter is sent to you to register our **STRONG OPPOSITION** to the Bill that is before you: Raised Bill 5552.

This proposed Bill is entitled 'An Act Concerning Special Education'. Though the Bill has a rather harmless and innocuous sounding title, the substance of it is potentially devastating to our members and families.

First, it adds yet another layer of administrative bureaucracy that our families must negotiate their way through on their way to making sure that their special son or daughter is able to get the support and accommodations they need in order to receive the free appropriate public education they are entitled to. To turn a phrase: "Education delayed in education denied".

It should be pointed out that there is already a mediation process whereby the parties to any dispute might attempt to reach an amicable and mutually agreeable solution to their problems.

On the other hand, this adjudicatory proceeding is, by the terms of this Act, mandatory. This alone might not be all that objectionable (looking beyond the increased delay as mentioned above). However it is the 'who' and the 'what' of this Bill that is really objectionable.

In order to move forward through this process the parties (the parents and the District) are encouraged to agree upon "*an impartial third-party adjudicator*". First off, what parent (usually completely overwhelmed in their effort to raise their special needs child) knows the name or identity of "*an impartial third-party adjudicator*" for the purposes of resolving these special education issues? This is not generally the type of information that is generally discussed by the parents. As a parent, where would we go to find the name and background information about such a person (certainly not down to the Community Bulletin board at our local market [next to the listings for house painters

and babysitters]). It seems that the parents would necessarily be required to depend on a list of 'impartial adjudicators' from a list that is compiled and provided by the State. And again, the parents would have absolutely no way of knowing what sort of person that they would be getting should they select off this list (would there be a list of references with contact numbers? [No, that would be against FERPA]).

If both parties cannot agree, then according to the Bill the State would decide (again, pulling the names from a list?). What would be their criteria for making this selection? How impartial would they be?

The Bill states that the 'adjudicators' "*shall have significant experience and expertise in the fields and areas significant to the review of the special educational needs of the child or pupil*". And where would this pool of 'significantly experienced' 'impartial' adjudicators come from? We fear that they would predominantly be comprised of retired State and local school District officials who would have a particular slant in the way that they look at things.

What is potentially even more alarming is the fact that the findings of fact and the 'impartial' adjudicator's recommended ruling are to be made a part of the record in any subsequent 'due process' hearing ("*If either party rejects the recommendation of the adjudicator, either party may elect to proceed to a hearing pursuant to subsection (a) of this section. In any such hearing, the findings of fact and recommendation of the adjudicator shall be available to the hearing officer and shall become part of the record of the hearing*").

First, it is unclear what the nature of this subsequent due process hearing might be. For instance, would it be a 'de novo' proceeding or an administrative review looking only for arbitrariness or an abuse of discretion or misapplication of the law? If it is to be a 'de novo' proceeding, then what sort of evidentiary impact (if any) are the findings of fact and recommended ruling to have? If it is to be in the nature of an administrative appeal, then the underlying ruling gains new importance and heightened significance (with the burden of proof and persuasion resting on the party that is essentially 'appealing' the adjudicator's decision).

Next, with the stakes so highly elevated at this initial stage, it would almost be required that the parents retain legal counsel to represent them at the adjudication stage. Of course, they would also need to have their 'expert' witnesses present (and paid for) as well. Accordingly, the cost of this process would have effectively been doubled (if not more). The prospect of shelling out thousands of dollars first at the adjudication stage and then at the due process stage would act as a bludgeon beating the parents into submission and forcing them to accept some sort of mediated agreement. As a matter of irony, this added step (apparently the brain child of the

Districts – and certainly one supported by the Bar group that services the Districts) would have the impact of raising their legal costs significantly as well.

It is therefore the position of the Norwalk SPEDPartners that this Bill (and similar variations thereof should they arise) should be rejected.

Thank you for your consideration in reviewing this letter.

Very Truly Yours,

M. Jeffry Spahr, Esq.

Submitted on behalf of the Norwalk SPEDPartners