

Testimony of Attorney Andrew A. Feinstein
To Committee on Insurance and Real Estate
On S.B. 542, An Act Establishing the Connecticut
Special Education Predictable Cost Cooperative
February 21, 2017

Chairmen Larson, Kelly and Scanlon, Ranking Member Sampson and Members of the Committee,

I am a private attorney whose practice exclusively represents children with disabilities and their families in seeking appropriate special education services from school districts. I have offices in Mystic and Manchester. I have been practicing in this field for more than 20 years.

I urge the Committee to approach S.B. 542 with extreme caution. The promotional material by the Connecticut School Finance Project is flashy and appealing, but fails to answer some serious questions. And like all major reforms, the Cost Cooperative will have consequences and will create incentives that are hard to predict and may not be desirable.

As a preliminary matter, let's understand that this bill does nothing to help children with disabilities. My concern is whether it would actually harm children with disabilities. Connecticut special education law and the federal Individuals with Disabilities Education Act (IDEA) requires school districts to provide students with a disability with a free appropriate public education. School districts are not permitted to provide an inadequate education because an appropriate education would cost too much. So, the unpredictability of funding or the tightness of town's budgets cannot serve to deprive a child with the education guaranteed by law.

It is undoubtedly the case that school districts see fluctuations in their annual special education funding, due to changes in the student population, due to changes in programming, due to changes in cost of staff and outside services, and due to numerous other reasons. Yet, the fluctuations are not nearly as radical or unpredictable as portrayed in the Connecticut School Finance Project's on-line video. What is a fact is that special education tends to cost around twice as much per student as general education and the costs of education consume a significant portion of municipal budgets. Nothing in S.B. 542 will change that.

Before reporting this bill to the full Legislature, the Committee needs to address the following questions:

School districts can do more than the bare minimum required by law by offering better programs and services for children with disabilities. What about the school district that wants to create a first-rate literacy program, or a center for Applied Behavior Analysis, or an alternative school for students with emotional disturbances? Will an insurance scheme reimburse a conscientious district that wants to offer excellent special education services with funds collected from other school districts that are barely able to provide the minimum required by law?

Is this a voluntary insurance program or a mandatory one? If it is voluntary, one can presume that the relatively low cost districts will not participate and the annual contributions of

the participating districts will skyrocket. If it is mandatory, we appear to be moving to state control of special education, which will certainly lead to standardization of services and a loss of local district initiative. On what basis do we believe that such a centralized, bureaucratic system will lead to better education for children with disabilities.

If this is an insurance program, will there be adjusters? Will these adjusters second guess the decisions of local Planning and Placement Teams in determining what services are provided for each student with a disability? Any such second-guessing of the PPT decision will surely violate the requirements of the IDEA and will undermine the notion of individual education programs. And, it will likely ensure that all students receive no more than the bare minimum required by law.

How is this program going to save any money, except if it serves to lower the bar for appropriate educational services? If the same level of services continue to be provided to each student, the costs remain the same. The only difference is the cooperative will add a new organization that will need to be funded out of the same pot of money, thereby reducing the amount of money available for special education.

What happens when the fund runs out of money in a year? Are school districts back on their own funding required special education programs?

The Governor's Budget provides additional special education funding for certain poorer districts. The Connecticut School Funding Project asserts that the cooperative will lay claim to this money and distribute it. How does that provide more funding for the districts the Governor seeks to help?

Judge Moukawsher, in his decision in *CCJEF v. Rell*, labeled Connecticut's funding of special education as irrational. I see nothing in S.B. 542 that makes it more rational.