

Education Committee JOINT FAVORABLE REPORT

Bill No.: HB-5447

AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE AUDITORS OF
PUBLIC ACCOUNTS CONCERNING PRIVATE PROVIDERS OF SPECIAL

Title: EDUCATION.

Vote Date: 3/23/2018

Vote Action: Joint Favorable Substitute

PH Date: 3/14/2018

File No.: 256

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SPONSORS OF BILL:

Education Committee
Representative Geraldo C. Reyes, 75th District

REASONS FOR BILL:

HB 5447 requires that local or regional boards of education must enter into a written contract with a private provider of special education services for the provision of the services in order for that board to be eligible for reimbursement under the state's special education excess cost grant (CGS § 10-76g). It also specifies that the individualized education program of a child cannot be considered a contract between a board of education and a private provider of special education services for purposes of this grant. It also provides that this requirement shall not be construed to limit or interrupt the provision of special education and related services to a child by a local or regional board of education or private provider of special education services.

SUBSTITUTE LANGUAGE:

The substitute language removes the section that required SDE to create a rate schedule for the private provider of special education services, including items such as limits on the percentage the providers can charge for administrative costs

RESPONSE FROM ADMINISTRATION/AGENCY:

Commissioner Diana R. Wentzell, Department of Education (SDE):

Commissioner Wentzell testified that the SDE has concerns about HB 5447. SDE does not have the staff necessary to create a rate schedule for Approved Private Special Education Providers (APSEP). The department has 1 full time employee, paid through federal Individuals with Disabilities Education Act (IDEA) dollars, who works with APSEPs and focuses on the approval and monitoring of over 80 approved programs. Commissioner Wentzell is unsure if the IDEA funding used to pay the employee who handles APSEPs could be used to create a rate schedule and the fiscal office of SDE does not have the capacity to create a rate schedule.

Commissioner Wentzell did see the guidelines in lines 42-44 as feasible for SDE to create. Lines 42-44 of HB 5447 read: “such rate schedule shall include...guidelines to assist local and regional boards of education in selecting and approving such services and guidance on how such services are to be documented by private providers of special education services.”

Sarah Eagan, Child Advocate, Office of the Child Advocate (OCA):

Sarah Eagan testified on behalf of OCA in support of HB 5447.

Eagan supports HB 5447 because the bill will strengthen standards and accountability for services delivered to children with disabilities from private providers of special education and related services. According to three related reports by the Auditors of Public Accounts (APA) published February 22, 2018, regarding the audit of state and local funding and oversight for publically-funded private providers of special education services, there were 2,738 students enrolled in 65 state-approved private special education programs. The APA found that students who are educated by private providers are more likely to have primary disabilities of disturbance or autism.

Eagan continues to detail the tuition costs found in the APA reports. The tuition of programs examined by the APA varied from \$279 per day to \$871 per day.

The APA found that the state does not define the allowable types of costs for private providers for special education services, and that clearer definitions need to be provided to private providers by the SDE. The APA also found that not all local school districts engaged in contractual relationships with publically-funded private special education providers, and there is inadequate accountability for the delivery of funded services. There is also no specific outcome measure regarding the programmatic quality of various publically-funded private special education providers, and the results of site-visits and program reviews of private programs by SDE were not published to the public.

Eagan believes HB 5447 begins to address the concerns raised by the APA reports, such as the lack of transparency and accountability for the safety of students and the quality of instruction provided to students with disabilities in publically-funded private special education programs.

Eagan then provided a note on Massachusetts lawmakers' recent review of oversight policy for private special education programs.

Eagan finished her testimony by submitting additional language to amend HB 5447 to create greater performance measures and transparency and accountability related to the safety, health, and education service delivery to children with disabilities in publically-funded private education programs. The amended language specifically addresses the concerns raised by the APA, as well as the creation of performance indicators for publically-funded private special education programs. The performance indicators would measure the publically-funded private program's compliance to all applicable state and federal law and the quality of special education and related services.

Robert J. Kane and John C. Geragosian, State Auditors:

Robert Kane and John Geragosian testified on behalf of the State Auditors in support of HB 5447.

The State Auditors support section 1(b), which implements their recommendation that school districts and private special education providers must enter into a written contract in order to be eligible to receive excess cost grant funding. This recommendation was based on their audits, which found many private providers were not in contracts, but instead the school district used the student's Individualized Education Plan (IEP) as a contract. Further, the State Auditors would recommend that SDE maintain a master-list of allowable types of costs, and that all contracts between school districts and private providers reference this list in the language of contracts.

In regards to section 2, which requires the SDE to create a rate schedule for private providers of special education by January 1, 2019, the State Auditors do not recommend a rate-setting structure at this time. Instead, they recommend identifying allowable types of costs that private providers could include in their tuition. Prior to creating a rate-setting system, they recommend comparing private provider charges in Connecticut to similar provider charges in New York in comparable counties.

The State Auditors also provided an executive summary of the 2015-2016 audit on publically-funded private special education providers. The audit included a recommendation that allowable costs be defined by statute, regulation, or policy, as allowable costs are not currently defined. They were also concerned school districts were not contracting for certain types of services with vendors to set forth reasonable expectations prior to establishing an IEP. The State Auditors were also concerned that in 31 of 63 student records reviewed (49%) at the 7 private providers there was no contract between the school district and the private provider. In local districts which applied to SDE for an excess cost grant, the State Auditors could not find proof that 24 of 46 (52%) of the students' contracts were executed. In 1 of 7 (14%) of private providers, indirect services were provided to fulfill direct service requirements specified in the IEP. The thoroughness of documentation of the services provided by private providers was found to be varied between providers because there are no documentation standards for private providers in Connecticut.

The State Auditors then provided performance audit highlights, which found the SDE directory of APSEPs in Connecticut was out-of-date and the review process of private special education programs was only provided to the program seeking approval, instead of to the public. State Auditors also found the approval process to be unnecessarily burdensome without an online application. They also found review of financial audits and outcome measures to be extremely lacking.

NATURE AND SOURCES OF SUPPORT:

Marisa Halm, Director, Team Child Juvenile Justice Project, Center for Children's Advocacy:

Marisa Halm testified in conditional support of HB 5447 on behalf of the Center for Children's Advocacy.

Halm supports the intent of the bill to create accountability and transparency for private special education programs, but requests that the legislation address the development of public standardized performance and outcome measures for the private programs.

Halm also cannot support section 2. Halm believes setting specific rate schedules with defined costs and caps could restrict autonomy of the private providers to provide individualized services. The bill would also infringe on students' rights under the IDEA because it would focus on the cost of a child's education not their unique needs.

Orlando Rodriguez, Connecticut Education Association (CEA):

Orlando Rodriguez testified on behalf of CEA in support of HB 5447.

Rodriguez testified that CEA supports a rate schedule, as he believes we should treat all non-public services the same. Rodriguez had testified before the Appropriations Committee on February 22, 2018 on CEA's findings that the State was not implementing CGS § 10-66mm, which demands SDE calculate per pupil services fees for charter management organizations (CMO). Despite this, CEA supports CMOs, having founded one of the State's first charter schools, Integrated Day Charter School. Rodriguez is concerned about business-run CMOs. CEA suggests prohibiting a CMO fee, which will save taxpayers money on unnecessary management fees, without a negative impact on educational outcomes. If the prohibition on fees is not possible, Rodriguez wants the same transparency and fiscal rules public schools abide by.

Michael Russo, Vice President of Education, Wheeler Clinic, Inc.:

Michael Russo testified with concerns about HB 5447 on behalf of the Wheeler Clinic.

Russo is very concerned there is no provision to establish a methodology to create a rate schedule, which he believes could lead fiscal decisions made at the expense of vulnerable children. Russo requests the legislature develop a committee to create a methodology for rate schedules. He suggests this committee include stakeholders such as private schools, local school districts, SDE, auditors of public accounts, parents and education advocates.

Russo supports the concepts of monthly or quarterly submission of reports to districts of the services provided, writing contracts between private providers and the local school districts, and transparent audit processes.

Connecticut Association of Private Special Education Facilities (CAPSEF):

CAPSEF testified in with concerns about HB 5447.

CAPSEF supported section 1-A, which requires written contracts between private providers and local school districts. CAPSEF requests to participate in a workgroup with essential stakeholders to discuss a methodology for conducting a special education cost analysis before the development of a rate schedule. CAPSEF also requests RESC programs be included in HB 5447 to ensure a balanced process that creates accountability in all programs that receive public funds.

Ana Wittig, Chief Administrator, Oak Hill School:

Ana Wittig testified with concerns about HB 5447 on behalf of the Oak Hill School.

Wittig supported most of the concepts in HB 5447, such as the requirement for a written contract between private providers and local school districts. In regards to the rate schedule requirement, Wittig requests that all stakeholders be included in the process of development. Wittig also requests all special education providers outside the local district be included in the cost study. Wittig wishes these stakeholders to be included in the cost study in order to ensure all students will still be able to acquire FAPE and special education providers will be able to pay a living wage to staff.

Wittig concluded her testimony with support for her position by a parent of a student who attends Oak Hill School.

NATURE AND SOURCES OF OPPOSITION:

Mary Ellen Betzler, Director of Education, Giant Steps CT School:

Mary Ellen Betzler testified in opposition of HB 5447. Betzler has worked in special education since 1974, in the states of Missouri, California, New York, and Connecticut. She has worked as a “special education teacher, resource specialist, educational examiner, itinerant special education teacher, home school special education teacher, general education teacher, program specialist, itinerant special education administrator [of] preschool through age 21, district director of pupil personnel services, director of cooperative special education services, and director of education for a state approved special education private school.” Betzler believes the solution to high costs is not in HB 5447, but must be found in a wider discussion of teachers, administrators, service providers, and parents. Betzler urged the committee to postpone the bill until all sectors of the profession and parents have been heard.

Boys & Girls Village (BGV) Special Education School, aka Charles F. Hayden School:

The BGV testified in opposition of HB 5447. The BGV opposes HB 5447 because it would have a significant negative impact upon BGV’s ability to respond to demand from local school administrations (LEAs) to educate students with severe handicaps, typically social/emotional, who are unable to be educated by their local school system.

BGV opposed the concept of a statewide rate structure. They believe the creation of a statewide rate structure would hinder their ability to increase resources and expertise for students with higher levels of underlying illnesses and compromised learning capacity. The lower rates BGV predicts will lead to less access for students due to a scarcity of resources. BGV asserts that freezing or reducing private special education reimbursement will not only impede access, but will also cause a reduction in available expertise, poorer outcomes, less ability to return students to home schools, and higher risk overall. To LEAs the most important aspect of private education services is the quality of work.

BGV's rates are already in a competitive environment with other private providers and the Regional Educational Service Centers (RESC). BGV is concerned this legislation will leave the RESCs from statewide rate standardization by SDE. BGV's rates reflect their commitment to providing intensive behavioral/psychiatric services with specialized individual educational programming. In the past these services would be handled in an out-of-state program at a much higher cost.

BGV concluded their testimony by asserting that fixed rates as cost containment does not address the actual issue, the ability or lack of for a student to return to their home school in a timely fashion.

Connecticut Association of Boards of Education (CABE):

CABE testified with concerns about the language of HB 5447. CABE is concerned that the requirement of a written contract, instead of the current agreement language, would create confusion, since Black's Law Dictionary defines a contract as a "covenant or agreement between two or more persons with a lawful consideration cause." CABE testified that when a board of education makes an agreement with a private provider that the private provider will fulfill the provisions of the students IEP, and the board of education will pay a specified sum of money for services, this is a legally binding contract. Therefore this requirement is unnecessary to CABE.

Brigid Callahan:

Brigid Callahan testified in opposition of HB 5447. Callahan opposed the bill because it would place financial restrictions on private providers of education who receive some of the most challenging student cases. She believes this bill would negatively affect special education institutions and fail students who are most in need.

While Callahan can see the short-term fiscal concern behind the bill, she believes the bill would cost more in the long-term due to fewer providers of special-needs services and viable placement options. This would cause increased state spending on individuals with special needs over the age of 21 who did not receive the necessary skills and independence a properly funded institution and IEP could have provided.

Callahan concludes by saying that restricting all private providers to the same financial mold would leave out students who need more intensive care.

Martha Calleros:

Martha Calleros testified in opposition of HB 5447. Calleros is the mother of a child who receives services from the Capitol Region Education Council (CREC) because her daughter

has unilateral hearing loss. A teacher for the hearing impaired works with her child on a weekly basis, and Calleros fears the loss her child could experience without this service.

Calleros believes HB 5447 jeopardizes the services CREC provides her child, which are fundamental to her access to appropriate education.

Laura Carl:

Laura Carl testified in opposition of HB 5447. Carl is the mother of two children with dyslexia, who attend a private school in New York. This has cost them both emotionally and financially. Carl explains that all children are entitled to a FAPE, and by capping the amount a district is responsible for or the amount a private school can charge would threaten a student's access to education. Private schools already attempt to alleviate costs through donations and grants in Carl's experience, and putting unnecessary financial burdens on the schools would create a "cost vs. need" situation.

Carl ends her testimony by stating the effect private education has had on her children and asks the committee to reject the bill as written.

Lindsey Casso:

Lindsey Casso testified in opposition of HB 5447. Casso is a special education provider for a private organization and believes this bill will threaten the financial state of employees at the organization and the individualized educational resources for students who attend privately funded organizations. Casso states that public schools have a deficit of resources for students and if HB 5447 is passed, there will be a negative effect on the availability and quality of services private organizations are able to provide.

Casso concludes by asking the committee to consider the effect of the bill on professionals, parents, stakeholders, and students.

Mark R. Connelly:

Mark Connelly testified in opposition of HB 5447. Connelly opposes the bill because it will undermine the ability of private providers to serve students with special needs. He states there are many other ways to get better value from money spent in private special education, but this is not one of them.

David R. Gallaway, License Clinical Child Psychologist, The Institute of Professional Practice-School Services (IPPI):

David Gallaway testified in opposition to HB 5447. Gallaway is a child psychologist and has overseen the provision of specialized education for children with autism, learning disabilities, mental illness, and trauma related concerns. In his experience all the students benefit from the intensive care and go on to more inclusive levels on education.

Gallaway is strongly against section 2, because he believes it will negatively impact the ability to provide effective education and clinical support to children with disabilities. He is also concerned that proposed funding limits will result in a de-professionalization of services, which would hinder the short and long-term outcomes of needy children and communities. He

also believes the funding limits will reduce job opportunities for many college educated adults entering the education profession and increase burn-out for those currently within the field.

Cathy Gallbronner:

Cathy Gallbronner testified in opposition to HB 5447. Gallbronner has a 15 year old child who is educated by a private provider. Gallbronner had placed him in a RESC facility, which could not provide for his education or health. Her child was denied by 96 residential facilities, and without the private educational placement her child would have remained in a hospital setting. She opposes HB 5447 as it could risk her child's care.

Steven A. Girelli, President and CEO, Klingberg Family Centers:

Steven A. Girelli testified in opposition to HB 5447.

All of the students at Klingberg Family Centers were referred by LEAs, who could not meet the educational needs of the students. A private special education provider has the capability to provide individualized care a public school system could not and would therefore deny students of their right to free and appropriate public education, according to Girelli.

Girelli asserts the independent financial audit in the application process to be approved by the SDE proves the private provider is applying reasonable accounting practices. Girelli concludes his testimony by stating that a hastily created rate system based on a few State audits will fail to recognize the individualization and specialization required in private education schools.

Girelli suggests instead of HB 5447, a workgroup could be created to examine the issues raised in the State Auditors' reports and in HB 5447.

Carl Gross, President, Connecticut Council of Administrators in Special Education (ConnCASE):

Carl Gross testified in opposition to HB 5447 on behalf of ConnCASE.

Gross is strongly against section 2. He believes this will negatively impact the quality of services, staff turnover, and creative programming, and the rejection of some students because their needs exceed the funding of the provider. This also may cause senior special education professionals may be lost in Connecticut due to a lack of compensation.

Gross concludes promoting fiscal consideration over special need consideration will diminish individual planning and programming that is vital to special education legislation.

Karen Helene, Director, Benhaven School:

Karen Helene testified on behalf of Benhaven Schools in opposition of HB 5446.

Helene opposes the bill without certain considerations, such as rate setting that reflects the intensity of needs of various students who require private school education so that expectations set forth in the student's IEP will be fully funded.

Helene described the nature of education at Benhaven Academy, which requires a 1 to 1 student teacher ratio. The demands of properly educating these children require highly skilled, educated, and qualified teams of professionals. Helene worries rate setting will ignore the unique needs of complex individuals and create a methodology that focuses only on the most common needs.

Helene concluded her testimony with a recommendation that the Connecticut Association of Private Special Education Facilities (CAPSEF) be involved in a public/private partnership to establish workable rates.

Kelly Howard:

Kelly Howard testified in opposition to HB 5447. Howard has a daughter with dyslexia, who has been falling behind despite the IEP she was given in the first grade. The New Hartford School system told Howard her daughter was making progress but independent progress monitoring showed she did not have a mastery of reading, writing, or spelling skills. Howard placed her daughter at the Kildonan School, which is the only option for a structure literacy program for dyslexic students.

Howard regrets not receiving the specialized and individualized care for her daughter earlier. She feels her daughter was denied FAPE in-district by public schools, which were not trained to educate her daughter. She believes HB 5447 would threaten her child's ability to receive the free and appropriate education she has a right to.

Dale R. Hoyt, Vice President for Education, Ädelbrook:

Dale Hoyt testified on behalf of Ädelbrook, a non-profit behavioral and development service agency, in opposition to HB 5447. The educational environment at Ädelbrook is dictated by student's individual needs as directed by their IEPs. Hoyt described the case of one student, Alex, who graduated the program with success.

Ädelbrook provides appropriate and necessary care when school districts cannot. FAPE is a right under the IDEA, and according to Hoyt, this education can only be provided by private special education providers for some students. Hoyt opposes HB 5447 because it would force students into a "one size fits all" model.

Patricia Rehmer, President, Hartford HealthCare(HHC) Behavioral Health Network (BHN):

Patricia Rehmer testified in opposition to HB 5447 on behalf of BHN. Rehmer's concerns with the bill are about the depersonalization of education, and the written contract requirement. Rehmer worries that requiring a written contract would create unnecessary revisions of contracts on a routine basis.

Rehmer believes rate setting would impact the ability to fully meet complex and diverse needs of students or the necessity of professional qualified staff.

Julie Swanson, President, Special Education Equity for Kids Connecticut (SEEK):

Julie Swanson testified in opposition to HB 5446 on behalf of SEEK. Swanson testified in opposition because she believes not enough is known about the consequences of rate schedules on individualization of IEPs. After summarizing the bill, Swanson testified that SEEK cannot support the bill in its current form due to the unknown variables of financial restriction and rate schedules.

Swanson concludes her testimony by asking to work with the committee to craft legislation on the concept.

Many citizens oppose the bill from varying stakeholder positions such as special education providers, volunteers, and parents:

These stakeholders oppose the bill because it will have a negative impact on the availability and quality of special education providers. They also believe the bill will interfere with the individualized aspect of IEPs and a student's right to a free and appropriate public education. Jordon Aglieco, Senior Instructional Assistant/Behavior Technician, Milestones Behavioral Services

- Chrissy Amatrudo
- Sophia Aponte
- Meghan Baer
- Sarah Bedini
- Joanna Berardesca
- Christine Brushie
- Christina Calabro
- Erica Cardona
- Alison Carpenter
- Christopher B. Carveth, Esq.
- Lauren Gillis Coughlin, Co-Director, Creative Development, LLC
- Mandie Crisafi
- Marisa D'Amico, Milestones Behavioral Services
- Catherine Dube-Meisenholder, Special Education Teacher, Milestones Behavioral Services
- Angela Eklund Hunt
- Solandy Forte
- Christin Geraci
- Nizajet Gjuraj
- Lisa Gregory
- Victoria Hamilton
- Aimee Haray
- David and Carrie Jachimczyk
- Jennifer and Peter Krzykowski
- David Kuhn
- Ann LaCroix
- Elizabeth Lambert
- Jennifer Lano, Speakology LLC
- Carol Lenihan
- Suzanne Letso, President, Behavior Analyst Leadership Council
- Roger Letso, CFO, Milestones Behavioral Services, Inc
- Sharri Lungarini
- Daneil J. Lyga, CEO, The Children's Center of Hamden
- Kristine Marino-Hartmann, Board Certified Behavior Analyst
- Gina Maroney
- Genevieve M. McGrath
- Susan Mercik Davis
- Ashley Meredith
- Cresse Morrell
- Karen Neag

- Elizabeth C. Nulty, Licensed Behavior Analyst
- Judy Palazzo, Director of Behavioral Services, Milestones Behavioral Services
- Kalpesh Patel
- Diana Paulin
- Paul J. Piasecki, CPA
- Vanessa Quagan
- Ashley Rouse, Behavior Specialists III-Advanced Intervention
- Amy Rucci
- Brian Rucci
- Wes Lee Rucker
- Jennifer Ryan
- Michael Ryan
- Ashley Sadowski
- Tracy Sanford
- Nancy and Peter Scimeca
- Elizabeth Sellinger, Director, The Institute of Professional Practice, Inc.
- Pamela Skudlarek
- Kate Swatkowski
- Delia Thomas
- Olivia Togridis
- Kim Tromba
- Diane Vergara
- Tania Vidosevic
- Brian Walker
- Scott Wells, Director, Options Employment and Educational Services
- Tricia Whitehouse
- Diane Willcutts
- Alex Woron
- Clifford and Sherry Yang
- Tamara Zichichi

ADDITIONAL TESTIMONY:

None expressed

Reported by: KaceyLee Klein

Date: April 11, 2018