SEEK Testimony to Committee on Education
on H.B. 6557, H.B. 6556, S.B. 977, H.B. 6559, and S.B. 976
March 3, 2021

Chairman McCrory, Chairman Sanchez, Ranking Members Berthel and McCarty, Members of the Committee,

Special Education Equity for Kids in Connecticut (SEEK) is a statewide organization of parents, providers, attorneys and advocates working for high quality education and civil rights for students with disabilities. We appreciate the opportunity to appear before you today.

Today, the Committee takes up a number of bills of great significance to students with disabilities and their families. We have numerous comments that we know the Committee will take into consideration in its work.

*** H.B. No. 6557 (RAISED)**
AN ACT CONCERNING SOCIAL AND EMOTIONAL LEARNING.

Two years ago, the Legislature created a high-level Collaborative on Social Emotional Learning, on which I was honored to serve. Through numerous meetings, the Collaborative has discussed the proposals contained in this legislation. As such, this legislation offers a road map for dealing with the mental health needs of school students and staff.

The important starting point is that we, as a society, have made schools the first responders for students with emotional needs. Community mental health services are limited, underfunded, and ill-equipped to deal with the tremendous need that exists. Law enforcement often exacerbates the issues. Hospital emergency rooms cannot provide continuing care. The responsibility has been left, almost by default, to the public schools.

The reality is that cases of trauma, anxiety, school avoidance, suicidal ideation, and depression are skyrocketing among school children. This trend was clear before COVID-19. The growth has mushroomed since the shutdowns.

With that as context, SEEK supports H.B. 6557. It creates a needed screening mechanism and embeds social emotional learning and restorative justice in all elements of the educational establishment. Perhaps of greatest significance, section 2 establishes staffing ratios for school counselors, school social workers, family therapists, and school psychologists, as recommended by their national organizations. Taken together, for every 1000 students, a district, under this bill, would need to employ four counselors, four social workers, four family therapists and two school psychologists. Currently, statewide, instead of 14 such staff for every 1000 students, there are 7. So, the requirements in the bill represent a doubling of the current social emotional staff support level.

We see social-emotional supports, as mandated by this legislation, as a way to finally rid Connecticut schools of exclusionary discipline, such as suspension, expulsion and police referrals. Indeed, in 2018, the State Department of Education published a booklet entitled, "Alternative Educational Opportunities for Students Who Have Been Expelled: Best Practice Guidelines for Program Implementation." The publication describes a therapeutic setting which should be the standard for students whose maladaptive behavior makes it necessary to remove them from the regular classroom and should be used instead of expulsion, suspension or a police referral. H.B. 6557 starts us down the path to treating behavior as the social-emotional issue it is and stopping treating misbehavior in school as a law enforcement issue.

***H.B. No. 6556 (RAISED)**
AN ACT ADDRESSING ISSUES CREATED BY THE COVID-19 PANDEMIC ON PUBLIC EDUCATION IN CONNECTICUT

***S.B. No. 977 (RAISED)**
AN ACT CONCERNING VIRTUAL LEARNING

H.B. 6556 and S.B. 957 seek to ameliorate some of the education issues created by the COVID-19 pandemic. They are generally okay as far as they go but fail to address a myriad of other critical issues. We, therefore, offer nine areas in which legislation is sorely needed. We ask the Committee to revise the legislation to deal with these critical areas:

1. Compensatory Education

Connecticut schools are morally and economically compelled to deal with the learning loss of all students; they are legally required to compensate students with disabilities for the lack of a free appropriate public education (FAPE) for the last year. Connecticut school districts generally have been slow and reluctant to provide compensatory education, mistakenly believing that there has to be a showing of fault before a student is entitled. That is wrong. Any failure to provide a FAPE, whether negligent or created by circumstances wholly outside the control of the school district, entitles a student to compensatory education.

We have heard that it would be impractical to assess the learning loss and create an individualize program of compensatory services for each of Connecticut's 80,000 students with an IEP. Not true. Under existing law, each year, every student with a disability has an annual review PPT at which the student's present level of performance is determined. At this annual review PPT, schools and parents assess whether the student has achieved the goals set a year ago and design services of the right type and intensity to provide a meaningful educational program. Determining needed compensatory services involves the same process. School districts have a duty to mitigate the loss. Compensatory services should be the order of the day, not an extraordinary remedy when a parent challenges the district.

The problem is that the State Department of Education has failed to issue guidance on this issue. This Committee could address the issue by amending H.B. 6556 to mandate the provision of compensatory services, when needed on an individualized basis, and provide that some portion of the federal stimulus money that has come to the state or will come to the state be dedicated to fund those services. Note that the American Rescue Plan, passed by the Senate on Saturday, provides that at least $2.6 billion of the $130 billion in aid to schools must be spent on special education.

2. Summer Services

SEEK certainly support summer services. Still, we need to understand that summer school is not the same as extended school year (ESY) on a student's IEP. Summer school is a general program of instruction, often to remediate lost learning during the school year. ESY is an individualized program to help meet a student's IEP goals and objectives. ESY can be a compensatory service and can reduce the loss to a student with a disability.

Still, after a year of isolation and computer-based learning, it may not psychologically or developmentally profitable for a student to go to summer school. The Committee should address this issue by making clear that ESY must be voluntary, and that no student waives his or her right to compensatory services by declining an offer to attend a summer program.

3. Assessing Learning Loss

The bill is rather too general in its definition of learning loss. Most schools have followed their pre-existing curricula but have provided less intensity, less repetition, and less homework in each area. That could mean that students have less retention of the material they were taught. Indeed, a student could do well on a section end test but retain little of the knowledge due to the lack of intensity. Our assessment of learning loss must, therefore, be quite

granular. Statewide tests can give us a general idea but cannot provide the sort of detail needed to design a program of remediation. The Committee, in conjunction with the Department, needs to mandate an assessment regime that identifies, with specificity, the learning loss suffered.

4. Publication of Learning Loss Data

Annual statewide testing must go on to see where we are generally. Other than the 1% of the most disabled students who are exempt from standard testing under ESSA, there should be no exceptions to the test administration. Over and above that, however, the Department of Education should be reviewing and aggregating district curriculum-based assessments, so we have some data to support the claim of learning loss. We all assert that there has been serious learning loss, and especially serious learning loss among students with disabilities. But we have no data to support that. The Committee should press the Department to produce that data.

5. Remote Education Post-COVID

The past year has taught us a great deal about how to teach students at a distance. We need to collect and publicize best practices, as the Department has been doing. And we need to rethink our options for education, especially around IEPs and homebound instruction, so that a student with some special needs can opt to continue with remote learning, even as the rest of the school returns to in-person instruction. The current homebound regulations are far too limited and fail to provide a homebound instruction option for students with mental and emotional challenges. Rather than forcing the school avoidant student into a hostile school environment, we should be looking to use remote learning to provide educational benefit while we work on the underlying social and emotional issues.

6. Digital Connectivity

While Connecticut has been in the forefront of states in addressing the digital divide, the problem is far from solved. What good is it to have uniform standards and trained teachers using a virtual platform if a student does not have access to it? While most children with disabilities benefit much more from in-person learning, there are students who prefer virtual learning such as those who are medically fragile or suffer from debilitating school-related anxiety. Retaining a virtual learning option can be beneficial for some.

If we are providing remote learning and if we have a constitutional obligation to provide an education to all students, we have a binding obligation to provide digital equipment and internet connectivity to all students. We need to fund this endeavor. There is no reason we should put this obligation on local Boards of Education. The state, probably through its Public Utilities Regulation Authority, should be tasked with ensuring state-wide Internet access.

7. Absent Students

There are tens of thousands of students in Connecticut who have withdrawn from education entirely due to remote learning. They cannot or do not sign on to remote learning opportunities. They do not respond to efforts to reach out to them. There are four Connecticut districts with more than a 50% chronic absenteeism rate. The state lists 108,000 of the 513,000 students as chronically absent this year. The highest percentage of chronic absenteeism occurs in the most underfunded districts. We need to devote specific and serious resources to these students. We cannot use crude and punitive measures like truancy and DCF referrals. We need to lure them back to school and make the transition back to learning as comfortable as possible. A few districts have sent police to the house of absent students. This is a seriously counterproductive way to entice students back to school.

8. Transition Back to In-Person School

As we focus on remote learning, we need to be very conscious of and plan for the emotional dysregulation that is likely to occur as students return to full-time, in-person learning. This will be a time of disruption and anxiety. This will be especially true as we wean children off the computer screen and back to real human contact. We need to devote substantial additional resources to social and emotional supports.

9. Computer Privacy

Many schools use a suite of Google Apps for their remote learning programs. Hidden within this suite is software that tracks use of the computer. Schools use this data to ensure that students do not misuse their school-issued laptops. Parents, however, sometimes load this Google Suite on their personal computers. Does the school now have access to all their personal information, their texts, their banking information, their personal photos? It is incumbent on the state to deal with the issue and to provide assurances that virtual learning has not led to a wholesale and hidden violation of privacy.

So, in sum, H.B. 6556 and S.B. 977 help, but they hardly do what is necessary as we emerge from the COVID-19 shutdown. Far more needs to be done.

*** H.B. No. 6558 (RAISED)**
AN ACT CONCERNING ISSUES RELATING TO THE PROVISION OF EARLY CHILDHOOD EDUCATION AND SERVICES IN CONNECTICUT.

*** H.B. No. 6559 (RAISED)**
AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE OFFICE OF EARLY CHILDHOOD.

The proposal to expand the jurisdiction of the Office of Early Childhood from Birth to Three to Birth to Five raises enormous complications with relationship to special education services under the IDEA and, in so doing, appears to substantially curtail the rights of parents. The legislative proposal appears to change the State's Birth to Three program to one covering

students from Birth to Five, but only for children aged four and five who do not otherwise qualify for special education. The legislation is unclear whether this creates a choice for parents to make: pick continuation of early intervention services or jump into the special education system. While we appreciate a new mechanism to provide services for young children with disabilities, we are very concerned about the possible impact on student's eligibility for special education and related services from their local school district.

As practitioners in special education, we are acutely aware of the challenges faced by families with children with disabilities when those children reach age three and must transit from the early childhood program to special education. The family-friendly Individual Family Service Plan process abruptly changes to an often technical and overwhelming school-based special education process, where it is not uncommon for families to encounter resistance to continuing the level of service that has been effective for the child.

Further, we understand addressing the needs of pre-school aged children imposes responsibilities that may not be in the wheelhouse of local school systems. School districts in which universal preschool is not offered have sometimes created self-contained programs that do not provide an education in the Least Restrictive Environment (LRE). We see students being placed in preschool programs entirely populated by students with disabilities, when those students would be better served at home or in a venue with typical peers. Still, extending the Birth to Three program for two more years raises deep concerns. The first and most obvious concern is that families whose children require special education may be attracted to the IFSP option out of familiarity with the providers or because it offers more hours of related services, when a school-based special education program better addresses the student's long term education needs.

Further, this cut-out for students age four and five who are not eligible for special education will incentivize school districts to deny eligibility, knowing that the student can get services from the early intervention program and thereby reduce costs to the district. Not enjoying the requirements and protections of special education during the two years may tend to hamper the identification of a student when he or she is ready for kindergarten. Specifically, the student who remained in the early intervention program will not have the educational record necessary to accurately establish present levels of performance to design a program for the kindergarten year. The family would need to go through the eligibility process de novo at age 5.

There is also the matter of cost. As part of special education, the student is entitled to a free appropriate public education. Free means at no cost to the parents. The present Birth to Three program is partly paid for by state and federal dollars. To offset some of the costs, Birth to Three programs bill private insurance and Medicaid, and, families that make $45,000 or more, pay a monthly fee based on a sliding scale. So, services that are free to families under the special education program could cost the family money under an expanded Birth to Five Program.

In brief, SEEK believes that the proposed change from Birth to Three to Birth to Five poses too many unresolved issues as to Connecticut's implementation of Part B and Part C of the IDEA to enact.

Current written policy precludes Birth to Three providers from communicating recommendations to the PPT. It states, "Unless requested by the LEA, it is not the role of the Birth to Three personnel to recommend. . . proposed special education goals, personnel, placement or services, including the location, type, frequency, or intensity of services, or to make other recommendations." This makes no sense, as the Birth to Three providers (along with the parents) are usually the only members of the PPT who have significant knowledge of the child's

needs and progress. Birth to Three staff have reported that they could lose their contracts if they share recommendations at a PPT. We recommend a legislative change to ensure that Birth to Three providers have the same protection against retaliation as was provided to school staff in P.A. 19-184.

*** S.B. No. 976 (RAISED)**
AN ACT CONCERNING SPECIAL EDUCATION.

S.B. 976 contains two sections. SEEK supports the proposal contained in lines 18-25 of the bill to eliminate subsection (c) of C.G.S. §10-76q, which has permitted the Connecticut Technical Education and Career System (CTECS) to exclude qualified students with disabilities from technical high schools. For too long, these schools have discriminated against students with disabilities by either refusing admission or returning them to their districts when special education services were needed. This has been devastating to many students who were drawn to hands-on learning and who would have thrived with a technical-skills-based education. It is critical that CTECS be accessible to all students, including those with IEPs. Indeed, CTECS receives IDEA funding and must comply with the IDEA by providing students with disabilities a Free Appropriate Public Education. This includes placing the student in the school they would attend if they did not have disabilities (in this case, a technical high school) while providing needed supplementary aids and services.

It is important to note that, according to the CTECS 2019-2020 annual report, the student body in technical high schools included only 463 students with IEPs out of 10,870 students--a proportion of 4.2%. This is in stark contrast to the state proportion of students with IEPs, which is 16%. The CTECS Profile and Performance Report for 2018-2019 states that their student population included 10.3% of students with disabilities, which is higher than what is in the

annual report. However, this is still far lower than the state average and reflects systemic discrimination.

S.B. 976 fails to change problematic language from the existing statute, which needs to be eliminated. Lines 7-9 of the current bill indicate that the State Board of Education will "determine the appropriateness of the technical education and career school for the educational needs of each such child [with a disability]." It is inappropriate for the State Board of Education to unilaterally make this decision. In that parents of children without disabilities have the right to place their children in technical high schools, the same right should be true for parents of students with disabilities. The bill language that indicates the State Board of Education will determine the appropriateness of the technical school for a child with an IEP places an additional admissions hurdle for students with disabilities and needs to be eliminated.

It is not appropriate that the State Board of Education is the Local Education Agency (LEA) for the technical high schools. As the Connecticut Technical Education and Career System becomes an independent agency, especially, that agency needs to be the LEA, not the State Board.

SEEK strongly opposes section 2 of S.B. 976 which establishes another task force to study issues relating to the funding of special education. The federal and state special education systems were established with the unquestionable intent that all students, regardless of their abilities or disabilities, are entitled to a free appropriate public education by the public schools of the state. Once the appropriateness threshold is met, school administrators can and do pick the most cost-effective approach. To put cost first is to undermine the entire intent of the law. We could certainly save money by stopping the education of students with disabilities. Such a wholesale retrenchment of the civil rights of millions of children and their families should only

come, if it ever did, through a clear legislative process. There is simply no democratic justification for a task force to consider this issue. We might as well create a task force to decide whether the First Amendment ought to be repealed.

The odious and undemocratic nature of the task force is made manifest by its proposed composition. Out of 14 members, only three “represent” families of children with disabilities. The rest are all school representatives. It is also a concern that the chair is the executive director of the Connecticut Association of Public School Superintendents. Any task force related to special education should include a chair or co-chair who is an attorney or advocate representing families of children with disabilities. Any task force looking at special education should have equal membership of consumers of special education services. But please understand, that, without regard to the constitution of the membership of this task force, we strongly oppose its creation.

As always, SEEK stands ready to work with you to develop appropriate and effective legislation to enhance the education and protect the civil rights of students with disabilities.

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