

PA10-175

HB5425

Education	401-422, 425-447, 453-461, 468-492, 506-507, 518-524, 534-551, 556-599, 601-604, 607-611, 613, 757-1010	414
House	1758-1816	59
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H – 1078

**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2010**

**VOL.53
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1558 – 1869**

voted? Please check the roll call board to make sure your vote has been properly cast. If all members have voted, the machine will be locked, and the Clerk will please take a tally. The Clerk, please announce the tally.

THE CLERK:

House Bill 5360 as amended by House "A."

Total Number voting 144

Necessary for adoption 73

Those voting Yea 137

Those voting Nay 7

Those absent and not voting 7

SPEAKER DONOVAN:

The bill as amended is passed.

Will the Clerk please call Calendar 218.

THE CLERK:

On page 34, Calendar 218, Substitute for House Bill number 5425, AN ACT CONCERNING SPECIAL EDUCATION, favorable report by the Committee on Appropriations.

SPEAKER DONOVAN:

The Vice Chair of Human Services, the Meriden Representative Cathy Abercrombie, you have the floor.

REP. ABERCROMBIE (33rd):

Good evening, Mr. Speaker. Thank you very much.

Mr. Speaker, I move for the acceptance of the joint committee's favorable report and passage of the bill.

SPEAKER DONOVAN:

The question is on acceptance of the joint committee's favorable report and passage of the bill. Will you remark?

REP. ABERCROMBIE (33rd):

Thank you, Mr. Speaker.

Mr. Speaker, the Clerk has an amendment, LCO 3936. I would ask the Clerk to please call the amendment and that I be granted leave of the Chamber to summarize.

SPEAKER DONOVAN:

Will the Clerk please call LCO 3936, which is designated House "A."

THE CLERK:

LCO Number 3936, House "A," offered by Representatives Fleischmann, Lyddy and Abercrombie.

SPEAKER DONOVAN:

The Representative seeks leave of the Chamber to summarize the amendment. Is there objection to summarization? Hearing none, Representative Abercrombie, you may proceed with summarization.

REP. ABERCROMBIE (33rd):

Thank you, Mr. Speaker.

Mr. Speaker, in Section 1, under federal law, requires that we have a state advisory council for special education. Currently we have 38 members on that council, but have not been able to fill all those seats. So Section 1 changes it down to 20 members.

Section 2 has to do with ABA, which is applied behavioral analysis. Currently in special ed, under an IEP, if -- and this is the point that everyone needs to hear -- if under the IEP the special ed teacher requires ABA, this bill requires them to be -- to have someone that's certified in this field or supervised by somebody in this field.

I move adoption.

SPEAKER DONOVAN:

The question is on adoption. Will you remark on the amendment? Remark on the amendment?

Representative Hovey.

REP. HOVEY (112th):

Thank you, Mr. Speaker.

Mr. Speaker, through you, a couple of questions to the proponent of the amendment.

SPEAKER DONOVAN:

Please proceed, madam.

REP. HOVEY (112th):

Thank you, Mr. Speaker.

Through you, Mr. Speaker, can the good
gentlewoman tell us how many ABA certified specialists
there are in the state of Connecticut presently?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Thank you, Mr. Speaker.

Through you, currently there are 185.

SPEAKER DONOVAN:

Representative Hovey.

REP. HOVEY (112th):

Thank you, Mr. Speaker.

And through you, Mr. Speaker, are those certified
professionals certified through the Department of
Public Health? Through the Department of Education?
Or are they certified directly through the Applied
Behavioral Analysis Institute themselves?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Thank you, Mr. Speaker.

Through you, they are certified through the national organization, BCBA.

SPEAKER DONOVAN:

Representative Hovey.

REP. HOVEY (112th):

Thank you, Mr. Speaker.

And through you, Mr. Speaker, being certified through the national organization, does this legislation require that they then be certified through the Department of Public Health or through SDE, which is the State Department of Education?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Through you, Mr. Speaker, no.]

SPEAKER DONOVAN:

Representative Hovey.

REP. HOVEY (112th):

Thank you, Mr. Speaker.

And Mr. Speaker, through you, is there a certification through our university system here in

the state granting a certification in behavioral intervention through our -- which a certification would be through our Department of Education?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Thank you, Mr. Speaker.

Through you, there is a certification through St. Joseph's College right now that is under the umbrella of the national certification. We also have Southern, Eastern and Western that are working on the certification program.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Hovey.

REP. HOVEY (112th):

Thank you.

And through you, Mr. Speaker, does the gentlewoman know how many credit hours an individual would need in order to become certified through the international organization in ABA?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Yes, Mr. Speaker. One moment please.

Through the national organization, the BACB requires a master's degree or 225 contact hours of specific university graduate coursework in behavioral analysis and 1500 hours of supervised experience.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Hovey.

REP. HOVEY (112th):

Thank you, Mr. Speaker.

And is it not also correct that, through the international organization, you can have a bachelor's degree and get a certification through them also? You don't necessarily have to have the master's degree, but they do offer a certification with supervision at the bachelors level.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Through you, Mr. Speaker, I'm not aware of that.

SPEAKER DONOVAN:

Representative Hovey.

REP. HOVEY (112th):

Thank you.

Through you, Mr. Speaker, does the good lady believe that at the present time there are a number of different school districts that are including applied behavioral analysis in their IEPs for children who are autistic?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Through you, Mr. Speaker, yes.

SPEAKER DONOVAN:

Representative Hovey.

REP. HOVEY (112th):

Thank you, Mr. Speaker.

And Mr. Speaker, did this specific legislation rise out of the fact that there are IEPs who are -- that are not being met and therefore, they are out of compliance with IDEA?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie.

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REP. ABERCROMBIE (33rd):

Through you, Mr. Speaker, yes.

SPEAKER DONOVAN:

Representative Hovey.

REP. HOVEY (112th):

Thank you, Mr. Speaker.

Mr. Speaker, is it not a fact that under IDEA, if a specific program or intervention is specified in an individual educational plan and the school district does not abide by that specific plan, that that school district is out of compliance and therefore, able to be sued by the family?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Through you, Mr. Speaker, yes.

SPEAKER DONOVAN:

Representative Hovey.

REP. HOVEY (112th):

Thank you, sir. And I thank the gentlewoman for her answers to my questions.

Mr. Speaker, in my mind, this is purporting and supporting a type of specific intervention which is

completely unnecessary.

Throughout those of our careers who are specialists and who work in the area of special education, who have worked under IDEA since 1975, one of the things that we have always been very, very careful about is not to ascribe to a very specific type of programming, because within the context of the individual educational plan there are many and varied types of interventions that can be very effective.

Within the field of autism, ABA has been found to be highly effective. And people who are trained in the area of behavioral analysis at the undergraduate level and then again at the graduate level can practice ABA without necessarily being credentialed by the international organization, which basically is an organization that purports and supports and promotes itself through its own professionalism and wants to increase, of course, its numbers professionally.

The other side of this equation is that if it is in an individual educational plan that a child should receive applied behavioral analysis and the school district does not follow that individual educational plan, they are out of compliance and therefore, open to litigation on the part of that child's family. And

that would be true for all kinds of different types of intervention.

Personally I, you know, I am trained in many and varied areas and I actually consult in the area of special education. I often will prescribe or try to get prescribed in an individual educational plan a particular type or methodology of intervention. And if I am successful in helping the family get that intervention into the individual educational plan and the school district does not follow it, we then proceed to a due process hearing, and then from there, to a formal aspects of litigation if necessary.

All of the families within the -- who have autistic children, or any child that is involved in the special-education genre, have the same capabilities to do that. In my mind this is supporting a particular methodology that is, you know, very acceptable, has great validity and reliability, but does not necessarily need to be legislated since it's already mandated under IDEA at the federal level that the IEP should be followed.

And if the good Representative has encountered school districts that are not following the individual educational plan, then those school districts deserve

to be litigated against.

And for that reason, sir, while I understand that the motivation for this particular piece of legislation is only the best and I understand the good gentlewoman's frustration with some of the differing school districts around the state, and I understand, very definitely understand and sympathize with the families' frustration, I do believe that there is due process already in place for them to follow. And that once again, this is legislation that micromanages.

Thank you, sir.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Christopher Lyddy.

REP. LYDDY (106th):

Thank you, Mr. Speaker.

Mr. Speaker, I rise in support of this amendment and the underlying bill. I first would like to thank the chairs of the Education Committee as well as Representative Abercrombie for their leadership on this issue as well as the Attorney General, Richard Blumenthal, for his leadership as well.

I'd like to also give a special recognition to Suzanne Letso, who's a constituent from Newtown, who

has advocated on behalf of children and adults with special needs both in our community in Newtown as well as from across the state.

So a big heartfelt thank you to you and to the other legislators involved.

Mr. Speaker, a question to the proponent of the amendment.

SPEAKER DONOVAN:

Please proceed, sir.

REP. LYDDY (106th):

Mr. Speaker, through you, has the proponent of the amendment familiarized herself with the Department of Education 2005 Guidelines for Identification and Education of Children and Youth with Autism?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Thank you, Mr. Speaker.

Through you, yes I have. I actually have in front of me the Guidelines for Identification and Education of Children and Youth with Autism. On page 78, which states, and I quote, there is currently no Connecticut state certification or credential in

ABA or requirement that school staff, in implementing programs based upon the principles of ABA, obtain national board or other certification in ABA. This was published in 2005.

I think part of the interpretation is, according to State Department of Ed, they have generally disagreed with this, with the State Department -- I mean, with the federal guidelines under the interpretation of IDA.

This legislation came around because two school districts hired someone that did not have the credentials to be doing ABA. ABA is for children that have autism. We know that early intervention is key and if you have someone out there that is performing this service that does not know what they are doing, it can do more harm than good to these children in the end.

So through you, Mr. Speaker, I would suggest -- I would say that given what the guidelines were back in 2005, it's about time that we in Connecticut comply with the federal guidelines.

SPEAKER DONOVAN:

Representative Lyddy.

REP. LYDDY (106th):

Thank you, Mr. Speaker.

Mr. Speaker, I appreciate the proponents answers and I couldn't disagree more with Representative Hovey's suggestion that this mandates a particular type of methodology.

Mr. Speaker, our families with children with special needs often go into the school system with a strike against them. A thick, bureaucratic system does not lend itself favorably to children or families with children navigating the special education services whether it be in the IEP, PPT, et cetera.

The bill seeks to ensure that students and family are getting what they need and what they have been promised and that the school districts are protected from possible lawsuits like the ones we have heard of in Norwalk.

It's important to note that this bill does not mandate or suggest a mandate of any type of methodology or ABA specifically. It does state that when an IEP specifies that ABA is needed, that a person with particular training and qualifications be the one to provide those services. It's that simple.

In the spirit of ensuring our children, families and school districts are protected, Mr. Speaker, I

trust the Chamber will vote favorably on this bill.

Thank you.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Ken Green.

REP. GREEN (1st):

Thank you, Mr. Speaker.

Mr. Speaker, I have to share and say that my remarks will follow the same lines as Representative Hovey. As a school social worker who deals with middle and high school students with emotional and psychiatric disabilities, and some who might actually may have been classified on the autistic spectrum, I understand the need and the desire for us to have people that are certified in this behavioral analysis.

But I think Representative Hovey made a good point. If, on the individualized education plan which is in agreement with the parents, the school districts; if there's a notation that a person with this certification needs to happen, then that's needs to happen. That's the current law. I'm not sure we need to have in our statutes something that's the law already.

I'm also concerned because if I look at lines

30 to 40, when it talks about if the commissioner of education determines that there are not enough certified or licensed personnel, I think the question was asked, do we currently have enough certified or licensed individuals? If we don't have that, does that mean that, in fact, we are going to be out of compliance?

Before that section it talks about teachers, paraprofessionals and other individuals being able to apply those behavioral analysis techniques if they are being supervised by a person with ABA.

So on one hand, we're saying that, in the IEP, if it says that you have to have somebody with an ABA certification, they have to be the one that provide the service. And then in some of the same lines we say that, but it can be applied by somebody else who is not certified as long as they are under the supervision. That to me doesn't necessarily mean that you have to have someone that's certified to do it.

I just really think that we're micromanaging the school system's educational structure to be able to provide services that they may or may not be able to provide.

If again, the individualized education plan

requires that person and if a school district is not able to provide that service, they're out of compliance and they should be so and they should be held accountable to that because that is the law currently.

So I'm not going to suggest that any school district should get off the hook if they don't provide the services as outlined in the IEP. But as I go to PPTs quite often as part of my job, we've got to be careful when we develop an IEP and we talk about all the service that's provided to a child.

We are very well attended when we want to make sure that we provide the best in what we can do, to provide the education for children, but we better -- we have to be very careful when we stop becoming very specific about who can provide that service.

As we address educational needs of our children, we really, I think, have to think about a team approach and that team approach means that there are individuals that may not be certified in this, that may not be licensed in this, that may have a piece in providing that education for the child. And when we start to get very specific like this through legislation, I think it's the wrong road to go.

Through you, Mr. Speaker, I have a few questions to the proponent of the amendment.

SPEAKER DONOVAN:

Please proceed, sir.

REP. GREEN (1st):

Thank you.

In lines 5 to 13 it talks about the applied behavioral analysis has to be done to any child on the autism spectrum. Can she tell me whether or not any child that may be classified as being on the autistic spectrum, do they all require an applied behavioral analysis?

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Thank you, Mr. Speaker.

Through you, no. What it says is, if part of the IEP or the 504 requires ABA, then that person has to be certified, but it does not require all the children on the spectrum to have ABA.

SPEAKER DONOVAN:

Representative Green.

REP. GREEN (1st):

Thank you, Mr. Speaker.

And I thank the Representative for that answer, because she made -- she said a keyword. When the IEP requires it, that is the purpose of the IEP. When the IEP requires something there's no room to move on that. We don't need statutes to say we want to make -- we want to put in statutes something that the federal law already says it's the law. When they require it you must do that.

Through you, Mr. Speaker, another question.

SPEAKER DONOVAN:

Please proceed.

REP. GREEN (1st):

Thank you.

In lines 30 to 40, it talks about if the commissioner of education determines there are not enough certified personnel in this field, that certain people can hold bachelor's degrees, they can have some courses.

If a paraprofessional was the person that was applying the strategies of the behavioral analysis, would that person who's not certified have to go through these services?

Through you, Mr. Speaker -- through this training? Excuse me.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Through you, Mr. Speaker, what that section talks to is within a person's scope of practice that they have already done this part of the casework and have not gotten a certification in it. So for example, child psychologists, occupational therapists, do not have a certification in this, but under their scope of practice, can be a supervised person in this area.

SPEAKER DONOVAN:

Representative Green.

REP. GREEN (1st):

Thank you, Mr. Speaker.

Maybe I don't understand some of the language here in the bill then. The lines 30 to 40 talks about if the commissioner of education determines that there are insufficient personnel, that they can authorize other persons to do this. Those other persons have to have, I think, two or three things; a bachelor's degree or have completed resource requirement. And earlier in lines 18 and 19 it talks about a teacher or paraprofessional being able to implement the individualized plan. That's somewhat contradictory.

If the individualized education plan says that it has to be applied behavioral analysis by a certified person, that you cannot substitute that person to do the job that you -- in the IEP. So that's somewhat contradictory.

On one hand you're saying it has to be the person and that you're saying other people can do it. And that's, I think, where the confusion comes in. I'm of the opinion that the agreement in the IEP is what needs to be followed. If we then allow other people outside of what we agree to in the IEP to do it, that's where the conflict and the problems come in.

We've actually said that in the language, that on one hand we're saying, if the IEP requires that you must do it, and then we say, well, here's the exceptions; if we don't have sufficient number of people, well, maybe it's somebody supervised -- that is not in the spirit of the IEP.

And so I'm of the opinion that we need to hold the school districts accountable for what they say they can provide and what the services of the children are. Children on the autistic spectrum, if they require this, need to get it. We do not need to water it down to now have these other examples or other

personnel that can do this.

If the spirit is that we want to make sure that they get the service, that let's say that school districts must follow the law, which the federal government says. And if not, that they're going to be held accountable through the due process or a hearing process, which towns and school districts may not like that, but that is why they should be very careful about what they say in an IEP and what they can or cannot provide.

Those of us in the field -- and Representative Hovey, really I think outlined it very well -- we need to be very careful. And even though this is well intended, I am not opposed to the spirit of this amendment. I think it is the right direction, but I really think it is overkill. And we're really micromanaging the federal law, which is a requirement. We do not need this.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Sharkey.

REP. SHARKEY (88th):

Thank you, Mr. Speaker.

Through you, a quick question to the proponent of

the amendment.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. SHARKEY (88th):

Mr. Speaker, I know that when the bill first came out of the Education Committee there was some concern about the potential cost of a state mandate on municipalities related to this bill. That drew a lot of attention for those of us who have been working -- and particularly those who have been working on the Moore Commission, because special education is one of those things that we are looking at in terms of the mandates that are opposed by our own State Board of Education on our local boards of ed that are costing millions of dollars that we may not actually need.

And through the rest of this year I believe we'll be spending a significant amount of time looking at some of those mandates to see if we can undo some of those, not things that are in statute, but actually are things that have been imposed by regulation by the state Department of Education.

So nevertheless, when we saw this bill coming out of Education, I think those of us who were concerned about these issues were concerned about the potential

costs of new mandates, but I noticed that there -- because of this amendment, that there may be a change on that front. There was a fiscal note under the underlying bill.

But through you, Mr. Speaker, my question to the proponents is, has that, in fact, changed by virtue of this amendment?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Thank you, Mr. Speaker.

Through you, yes, it has changed. In the original proposal there was a \$5,000 appropriation that the State Department of Ed felt at that time that they needed just to get the information through the districts.

When talking to them we said, why not do it via e-mail or other ways, or attach it to other correspondence that they have to do through the districts? So at this time there is no fiscal impact.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Sharkey.

REP. SHARKEY (88th):

And through you, Mr. Speaker, with regard to what may be required by local boards of education or regional boards of education that is being imposed by either the amendment or the underlying bill, is it your understanding that there is no additional cost to local boards associated with complying with the provisions of this bill?

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Through you, Mr. Speaker, no.]

SPEAKER DONOVAN:

Representative Sharkey.

REP. SHARKEY (88th):

Thank you, Mr. Speaker.

With those answers I fully support this bill and urge my colleagues to pass it.

And thank Representative Abercrombie for her leadership.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Fritz.

REP. FRITZ (90th):

Thank you, Mr. Speaker.

And through you, a couple of questions to the proponent of the amendment, please.

SPEAKER DONOVAN:

Please proceed, madam.

REP. FRITZ (90th):

Representative Abercrombie, I have a couple of questions for you. I'm a little bit overwhelmed by the scope of this amendment.

And I guess my first question is to you. Does it mean that all the therapists who work with children with autism spectrum will now have to get a master's degree or take additional credits?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Through you, Mr. Speaker, if I'm understanding the good lady's question, for example, in an IEP, the special ed teacher puts out the proposal that they feel the ABA is part of the therapy that would help this child. If the para is the person that's going to be doing -- providing the service, then no, if that's your question.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fritz.

REP. FRITZ (90th):

Through you, Mr. Speaker.

I know, Representative Abercrombie. I'm talking about actual occupational therapists, physical therapists, speech therapists; all of whom work with autism spectrum children. Will they then have to go on and get a master's degree or take additional credits?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Through you, Mr. Speaker, my understanding is no, because it's part of their scope of practice right now.

Through you, Mr. Speaker.

REP. FRITZ (90th):

Thank you, Representative Abercrombie.

And I have a further question, Mr. Speaker, through you.

SPEAKER DONOVAN:

Please proceed, madam.

REP. FRITZ (90th):

I know that Representative Sharkey talked to you about costs, but I am very concerned about what the costs could be or if there is an estimate of what the costs could be.

If what you're saying is that therapists will have to be supervised by a certified behavior analyst, what would the cost be?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Through you, Mr. Speaker, I'm sorry to say I don't have that answer.

SPEAKER DONOVAN:

Representative Fritz.

REP. FRITZ (90th):

Thank you, Mr. Speaker.

Well, in my mind I believe the costs could be prohibitive because the costs are very generous for the therapists who work with those children and all special needs children and they are already following IEPs.

Therefore, if they have to be supervised and because these therapists work one on one with the children, I would suggest to you and to this Chamber that the costs are going to be way out of sight.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Giuliano.

REP. GIULIANO (23rd):

Thank you, Mr. Speaker.

Mr. Speaker, I would like to speak in support of the amendment and the underlying bill. I think that there is a great consternation on the part of parents, particularly when the school districts may fall into some degree of noncompliance on an individual educational program.

And although an IEP is a contract between the parent and the district, the process by which parents can get redress, and that is due process, is a daunting one at best to a parent, even though under the planning and placement team nomenclature, they are part of the team. This can be a very unfamiliar territory. And to the extent that this amendment and the underlying bill strengthens that process, I would

support it.

I do understand the cautions and concerns raised by applied behavior analysis. Once again, this inclusion in the bill generates from problems in the field where practitioners who are inappropriately credentialed are practicing as if they had a professional credential.

What we can take a condition of developmental disorder, which is as serious and pervasive as autism spectrum disorder, and we can offer it a higher degree of credentialing so that we provide the best possible services only for those children who are deemed to be in need of them through their individual educational program, then I think that that spirit is well intended.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Aman.

REP. AMAN (14th):

Thank you, Mr. Speaker.

Looking at this, I'm having a few problems trying to get my hands on it, not being someone in the educational community. So I do have a few questions

through you, Mr. Speaker, for the proponent of the bill.

SPEAKER DONOVAN:

Please proceed, sir.

REP. AMAN (14th):

Yes. To the proponent of the bill, how many certified behavior analysts are there currently working in the state, or are certified and are able to work in the state?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Through you, Mr. Speaker, currently there's 185 certified in the state.

SPEAKER DONOVAN:

Representative Aman.

REP. AMAN (14th):

Yes. And following that line, how many children currently have the spectrum that would require someone what this type of training to work with them?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Through you, Mr. Speaker, I don't know how many special ed children we have currently, sir.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Aman.

REP. AMAN (14th):

Yes. Over the years I think I've heard in this Chamber and other places, and I may be mistaken, but I've seen numbers like one out of 150 children have autism, or another number such as that. So while the proponent may not know how many, I think it would be fairly safe to say there are many children in the state that are currently suffering from autism and would need help.

So maybe I'll try to get my question -- another question would be, someone who is a certified behavioral analyst, how many children can they work with at any one time?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Through you, Mr. Speaker, I think currently,

right now throughout the school district, it's 25 to one. One certified to 25 individuals.

SPEAKER DONOVAN:

Representative Aman.

REP. AMAN (14th):

Yes. That 25 number -- is the degree of problems a child has, because I've also heard that under certain circumstances it's a one on one; one behavioral analyst to one child.

And if, through you, Mr. Speaker, if the proponent can speak a little bit about how that type of training, or how that type of aid to the child would be done. And just a little bit about the process of working with the child to help me better understand the number of behavior analysts that are needed in any one particular school system.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Aman -- I mean, Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Thank you, Mr. Speaker.

Through you, currently, when you have an IEP, the team comes up with a proposal of what is the best

course of action for that child. They don't necessarily provide the service. Our paras provide the service or our teachers in the classroom. So for example, if a child goes through an IEP, and in the IEP they believe that ABA is the right course for this child, which is applied behavioral analysis, then they will train the para to provide that service. And that's the procedure throughout the school districts when it comes to special ed.

SPEAKER DONOVAN:

Representative Aman.

REP. AMAN (14th):

Yes. I thank the proponent for that information, because it's my understanding that currently, the paraprofessionals do most of the educating and that appears to be continuing the process.

I think part of my problem is that we have roughly 160 towns in the state and probably 150 different school systems. And earlier on we said that there's a little over 180 certified people. That comes out to roughly one certified behavior analyst per school system. And I just find it difficult to understand how that few number of certified people are going to be able to certify -- or to work with and

guide the number of paraprofessionals.

So I will be listening to the rest of the debate. I do understand that there is a very major problem treating these children. I agree that the earlier and the better the assistance the children get, how much better their lives are in the future.

So I will be paying attention to the rest of the debate, but I'm finding it difficult to see how under shall -- when we put in the words "shall provide" and we have so few that are currently qualified, how the school systems are going to meet the intent of the law.

So I thank you, Mr. Speaker and I thank the proponent of the bill.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Perillo.

REP. PERILLO (113th):

Good evening, Mr. Speaker. Thank you very much.

I remember Representative Fritz asking a question of Representative Abercrombie a while back, I think maybe I misunderstood the answer. The question was -- and I'll ask it again just to clarify, through you, Mr. Speaker, if I could.

SPEAKER DONOVAN:

Please proceed.

REP. PERILLO (113th):

The question was, what is the financial impact on the municipal school systems and the school districts of the change that we're looking at here today? I thought the answer was that we don't really know for sure, but I might have misunderstood.

Through you, sir.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Through you, Mr. Speaker, there is none, because the fact of the matter is we are not requiring school districts under the IEP to offer ABA. All we're saying is, if you are going to order -- offer ABA, they need to be certified.

Now we have staff in the school districts now, a few that we mentioned, child psychologists, occupational therapists, who are already not certified under their scope of practice can do the oversight of this program.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Perillo.

REP. PERILLO (113th):

Mr. Speaker, thank you. Mr. Speaker, thank you very much. I appreciate the answer to the question.

So again, through you, so in no way, shape or form is this any sort of mandate on a local school district?

Through you.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

No. Through you, Mr. Speaker, not at all. That's why it says, if it's part of the IEP, that the special ed decides and the team decides that this is an appropriate therapy. It's up to them to decide that.

We are not pushing for ABA or moving autistic children into that arena. Now saying that, we know all the data proves that with the early intervention, ABA is the best type of behavioral therapy for children with autism to be successful.

And I think what people have to understand is when I first came up here five years ago, the numbers of autistic children was one in 150. Today the CDC

has come out with one in a hundred. So as this progresses, we as states have to make sure that people that are out there providing these services are either licensed or certified. And in this State, we feel that the certification is the best way to go.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Perillo.

REP. PERILLO (113th):

Thank you. And I thank the gentlelady for her answer.

So although we are not requiring ABA through the development of an IEP -- and forgive me if I'm using the acronyms improperly. So if we're not requiring an ABA through the IEP, but we're also at the same time saying that the ABA is a tool that should be used and we're encouraging folks to use it and we're encouraging school systems to get to that conclusion that an ABA is required through the development of an IEP, then it seems to me that de facto we are actually mandating that, that a specific certification be required. And again, bear with me on the acronyms, but that a specific certification be required for those who are going to be introducing the ABA.

Thank you, madam.

So I understand that we're not necessarily requiring the ABA to take place, but it seems like we're setting ourselves up for a situation where there will be an ABA regardless. And that's sort of where my concern lies as it pertains to the cost and the issue that was brought up before from Representative Fritz.

I know in my school district, and I read the newspaper, and I know in a lot of different school districts in the state of Connecticut, you know, there is a significant budget crunch right now. Boards of education have been flat funded. You know, contracts are being reopened and renegotiated with teachers in order to ensure that there are no layoffs. Some districts are closing schools.

And what I hear from members of my board of education and what I hear from members of boards of education in other communities is that one of the primary reasons why we are seeing these budget crunches in all of our communities is the endless Chinese, you know, water torture of unfunded mandates we place upon them. And the one I hear more than anything else is when we implement mandates on special

education.

And I don't think there's a single person in this Chamber who wants to shortchange our special education students, but when faced with the possibility of closing schools, when faced with the likelihood in many communities that we're going to be laying off teachers, I'm very concerned that we're sitting here tonight talking about what, at the end of the day we all know -- we could call it what we want, but we know at the end of the day this is going to increase the cost of delivering education to our students in our communities, and that's a significant concern. And it seems like we do more and more of this every year.

We've heard a lot of talk this year about easing our community mandates, our mandates on municipalities. And here we are looking at adding another. And when I go back to my school district and I talk to the teachers there -- many of whom live in my district and I'm sure there's teachers in all of our districts, obviously.

When new teachers are going to lose their jobs in many ways because of the mandates we've placed on their school districts, when families and children are going to have to leave their school because our local

boards of education are closing that school, I think that's something we all need to take note of.

And here in this economic climate where we're seeing those kinds of school budget issues, I'm concerned that now is not the time to be introducing and approving legislation that is going to have the impact, though incrementally and not necessarily tremendously, but like I said, the Chinese water torture of adding one mandate on top of another.

And we all say all the time, well, it's not a big mandate. And the first time we say that it's not a big issue. And the second time we say, well, that's not a big mandate either. By the tenth, twentieth, thirtieth time, we say that's not a big mandate. It's become a big mandate and I just think we all are going to need to pause here, especially given the fact that there's nothing keeping a current school board --

In fact, let me add just to clarify, through you, Mr. Speaker, is there anything right now keeping a school board or school district from utilizing the certified personnel that this piece of legislation requires?

Through you, sir.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Through you, Mr. Speaker, no.]

SPEAKER DONOVAN:

Representative Perillo.

REP. PERILLO (113th):

Thank you, Mr. Speaker. And I thank the gentlelady for her answer.

That's what I thought the answer was. I just wanted to clarify.

So this is something that a school board can actually do right now. There's nothing keeping them from doing it and the legal issues are mentioned in potential liability to a school district if they don't do this. That exists today. It exists tomorrow.

And a school district may decide that they want to mitigate that liability by utilizing the certified personnel about whom we're talking, but that is a decision to be made by a local school district, by the locally elected board of education members in the municipality that we're talking about.

And here we are, legislating what we think is the right thing to do, what we believe must need to be done, what we are mandating that a school board and a

school district do, yet it's something that a town may decide to do already.

And again, I think that this is something we need to consider. It's something that we need to be concerned about and it is potentially moving us again in the direction where our school boards are screaming, begging for help, please ease the burden of unfunded mandates. And here we are and we're not doing that.

But as I read -- and correct me, I believe I read an earlier version of this bill. It might have been the original version of the bill. One of the things that I've heard a lot from my --

Perhaps this might be a question left for the bill as amended, rather than to ask it now. So I will end my questions there, but I may have some after we handle the amendment.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Hetherington.

REP. HETHERINGTON (125th):

Thank you, Mr. Speaker. Through you, if I may, to the proponent?

Is ABA the preferred treatment for spectrum autism?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Thank you, Mr. Speaker.

It's one of many behavioral therapies that school districts offer.

SPEAKER DONOVAN:

Representative Hetherington.

REP. HETHERINGTON (125th):

Thank you.

How common is it adopted now in addressing the condition?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Through you, Mr. Speaker.

I'm sorry, to the Representative. Can you repeat that, sir.

REP. HETHERINGTON (125th):

Yes. How common is it now used as a strategy?

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Thank you, Mr. Speaker.

Very common. Just to give you an example, in our Birth to Three Program, which has a huge amount of autistic children, out of ten of their therapies, seven of them are done with ABA therapy.

SPEAKER DONOVAN:

Representative Hetherington.

REP. HETHERINGTON (125th):

Uh-huh. Is it -- is this bill driven by the concern that unqualified people are engaged to use the therapy?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Thank you, Mr. Speaker.

Yes. Through you, currently there are two school districts being sued because parents found out that a woman who was performing this service in the school district, they were contracted with the school district, were -- did not have certification in this

program.

And to also add to that, people -- this person in particular was charging 50 to 75 dollars more than what a certified person in this profession charges.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Hetherington.

REP. HETHERINGTON (125th):

Thank you.

Through you, Mr. Speaker, what is the availability of people with this specialty?

I'm -- my concern is if there's limited availability and if this becomes part of more IEPs, it's going to drive up the cost. It just has to. So I'm wondering what is the availability for qualified people in the state?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Through you, Mr. Speaker, a lot of special ed teachers that I have spoken to, when we were developing this bill, are certified in ABA because it's a tool that works especially with autistic

children. I will say under scope of practice, which I have set a couple of times, occupational therapists, child psychologists, also use this tool.

So even though there's only 185 certified, that doesn't take into account the many professionals that are under their scope of practice can still perform the service.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Hetherington.

REP. HETHERINGTON (125th):

Thank you.

Through you, Mr. Speaker, well, if it has the common usage that you reference, seven out of ten I think you mentioned in that Birth to Three program, isn't it reasonable to expect that it's going to be expected by parents in any IEP that's put together?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Thank you, Mr. Speaker.

Through you, that would be left up to the professionals that do the IEP.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Hetherington.

REP. HETHERINGTON (125th):

I see. Thank you. I thank the proponent.

I certainly support the efforts to assure the most qualified people are chosen to address this condition. And it's a concern as well to protect schools from liability. Apparently, there's some -- Representative Abercrombie referred to two suits that are now pending.

But I just can't believe that this isn't going to result in an additional cost to local school districts. And it's a cost they can't control, because they are free to include it now in any plan, but with the force of this bill, it's going to show up more and more in a plan, which I think is just got to have some impact on school districts.

And I'm really concerned about this being another mandate on our local school districts at a time when the districts in my area, they are faced with laying off people, teachers and administrators. So I'm really hesitant to support this. And I thank you.

And thank you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie, thank you.

Remark further? Remark further on the amendment?

REP. ABERCROMBIE (33rd):

Mr. Speaker.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

When the vote is taken, can it be taken by roll call, please?

SPEAKER DONOVAN:

The question is for a roll call vote. All those in favor of a roll call vote, please indicate by saying, aye.

REPRESENTATIVES:

Aye.

SPEAKER DONOVAN:

The requisite 20 percent has been met. When the vote will be taken, it will be taken by roll call.

Remark further on the amendment? Remark further on the amendment? If not, staff and guests come to the well of the House. Members take their seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the chamber. The House is voting on House Amendment Schedule "A" by roll call. Members to the Chamber, please.

SPEAKER DONOVAN:

Have all members voted? Have all the members voted? Please check the roll call board to make sure your vote has been properly cast. If all members have voted the machine will be locked. The Clerk will please take a tally. The Clerk, please announce the tally.

THE CLERK:

House Bill 5425, House Amendment "A."

Total Number voting	141
Necessary for adoption	71
Those voting Yea	113
Those voting Nay	28
Those absent and not voting	10

SPEAKER DONOVAN:

The amendment passes.

Will you remark further on the bill as amended?

Representative Fleischmann.

REP. FLEISCHMANN (18th):

Thank you, Mr. Speaker.

Just briefly, as chairman of the Education Committee, I wanted to express my strong support for the bill as amended and to thank Representatives Abercrombie and Lyddy and others who've worked so hard to get this bill before us.

What this measure means, quite simply, is that children who are on the autism spectrum disorder spectrum who have an individualized education plan that says they need applied behavioral analysis will get a provider who has the certification to give that type of care, the best type of care that has been chosen for them through the IEP process.

This is going to be saving dollars. Folks in the city of Norwalk know that because there's a lawsuit that's underway now from families where care was provided by someone who lacked this certification.

So it's fiscally sound and it's morally the right thing to do. I thank my good colleagues for the support they showed on House "A" and I hope they'll join me in supporting the bill as amended.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Giuliano.

REP. GIULIANO (23rd):

Thank you. Thank you, Mr. Speaker.

I would like to add a point of clarification on the bill as it is now amended, Mr. Speaker. I've worked for about the past 30 years as a school psychologist in public-school practice. And I think it's important when we start to feel --

SPEAKER DONOVAN:

Excuse me, Representative. It was getting a little noisy. I couldn't really hear you from up here.

Please proceed.

REP. GIULIANO (23rd):

Thank you, Mr. Speaker.

I would just like to add a point of clarification about concerns that the members have in debate about the cost of applying ABA to issues of kids having autism in the public schools.

The autism spectrum disorder is a very, very broad spectrum. It goes all the way from kids who are a little bit idiosyncratic and have some social skills problems, all the way to the very, very bright, but socially inept Asperger kind of kid. The type of treatment that ABA targets are our severely autistic,

nonlanguage, typically very mentally retarded population. And in this very broad continuum of the autism spectrum disorders, those particular kids represent a very small percentage.

So as the members weigh service to children treatment interventions, IEPs and mandates, I think is a very important clarification to say that ABA as a treatment intervention is targeted to a very small population.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Perillo.

REP. PERILLO (113th):

Mr. Speaker, thank you very much.

I was beginning to ask a question before and I just would like again to relay it to Representative Abercrombie, through you, if I could.

SPEAKER DONOVAN:

Please proceed, sir.

REP. PERILLO (113th):

Thank you, Mr. Speaker.

In an earlier version of this bill I believe there was a Section that actually changed the burden of

proof. And is that not correct? I'll ask it --

SPEAKER DONOVAN:

Representative, why don't you complete your question.

REP. PERILLO (113th):

I had believed that there was an earlier version of this bill that changed the burden of proof in determining, you know, which students were eligible for special education treatment and which were not. Is that correct?

Through you, sir.

SPEAKER DONOVAN:

Representative Abercrombie.

REP. ABERCROMBIE (33rd):

Through you, Mr. Speaker, yes. There was a Section 3 and a Section 4 that have been taken out of this bill.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Perillo.

REP. PERILLO (113th):

Mr. Speaker, thank you very much.

Back to the previous discussion about unfunded mandates, I had attended a meeting of superintendents

and Board of Education chairs a number of months ago. There actually -- it was a Fairfield County meeting. There were a number of Fairfield County representatives there. And the overwhelming advice and requests they offered to us was that in terms of the special education mandates by the State of Connecticut, the fact that the burden of proof falls on the board of education and not on the families seeking special education for their student, was a significant burden. And in an earlier version of this bill, that burden of proof was actually changed. And I know a lot of members of the board of education and superintendents that I talked to were very happy to see that original version of the bill. And it's unfortunate that that was taken out.

You know, every student deserves the right to the special education that they need, but it has become very, very costly to boards of education and municipalities in the state of Connecticut because of the fact that the board of education bears the burden of proof to prove that the student is actually not eligible for special education treatment, versus the other way around, whereas you would oftentimes and in most cases in other states be the parent.

So I just feel the need to reiterate again my concern about the endless piling on of unfunded mandates to schools and school boards and municipalities. We had an opportunity earlier on in this bill to change one of the most burdensome unfunded mandates, yet we didn't do that. And in exchange we kept this provision of the bill as was just amended. We kept that in tact.

And we have essentially, as a Legislature, made a choice. We had a choice to reverse an unfunded mandate or to add a new one. And that choice was made very clear and I think it's important that the residents of the state of Connecticut and parents who are screaming for more funding and demanded unfunded mandate relief for their school systems, I think it's important that they recognize that here, today we are making a choice to do that.

We have chosen not to reverse a burdensome unfunded mandate. A reversal that would have made more money available to hiring teachers to keeping schools open, and instead we have added another mandate, which quite frankly at the end of the day we know have an impact and may eventually lead to more layoffs of teachers and larger class sizes. And

that's a problem and I think we need to be aware of it and I think the residents of the state of Connecticut need to be aware of that. Because today this bill we've made a decision, we've made a policy decision. And I just think it's important that we keep that in mind as we vote on the final bill as amended.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Would you care to remark further on the bill as amended? Would you care to remark further? If not, staff and guests please come to the well of the House. Members take their seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the chamber. The House is taking a roll call vote. Members to the chamber, please.

SPEAKER DONOVAN:

Have all the members voted? Have all the members voted? Please check the roll call board to make sure your vote has been properly cast. If all the members have voted, the machine will be locked. The Clerk will please take a tally. Will the Clerk please announce the tally.

THE CLERK:

House Bill 5425 as amended by House "A."

Total Number voting	140
Necessary for adoption	71
Those voting Yea	126
Those voting Nay	14
Those absent and not voting	11

SPEAKER DONOVAN:

The bill as amended is passed.

(Deputy Speaker Godfrey in the Chair.)

DEPUTY SPEAKER GODFREY:

I'm going to call on the distinguished Deputy Majority Leader to make a motion regarding moving some bills to the consent calendar.

Representative Nafis.

REP. NAFIS (27th):

Thank you, Mr. Speaker.

At this time I would like to move the following

items to the consent calendar: Calendar 274,
Calendar 277, Calendar 278, Calendar 279,
Calendar 282, Calendar 285 and 286. Thank you, Mr.

Speaker.

HJ7 HJ14
HJ15 HJ19
HJ27 HJ45
HJ48

S - 610

**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2010**

**VOL. 53
PART 13
3842 - 4128**

cd
SENATE

558
May 5, 2010

Calendar page 11, Calendar 488, House Bill 5297,
move to place the item on the consent calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Calendar page 11, Calendar 490, House Bill 5425,
move to place the item on the consent calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Calendar page 12, Calendar 496, House Bill 5497,
move to place the item on the consent calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Calendar page 13, Calendar 509, House Bill 5126,
move to place the item on the consent calendar.

THE CHAIR:

Seeing no objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

cd
SENATE

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May 5, 2010

Calendar page 10, Calendar 461, House Bill 5207;
Calendar 483, House Bill 5244.

Calendar 484, on page 11, House Bill 5383; Calendar
487, House Bill 5220; Calendar 488, House Bill 5297;
Calendar 490, 5425 -- House; Calendar 496, House Bill
5497; Calendar 509, House Bill 5126.

Calendar page 14, Calendar 511, House Bill 5527;
Calendar 514, House Bill 5426; Calendar 516, House Bill
5393.

Calendar page 15, Calendar 520, House Bill 5336;
Calendar 521, House Bill 5424; Calendar 523, House Bill
5223; Calendar 525, House Bill 5255.

Calendar page 16, Calendar 531, House Bill 5004.

Calendar page 17, Calendar 533, House Bill 5436;
Calendar 540, House Bill 5494; Calendar 543, House Bill
5399.

Calendar page 18, Calendar 544, House Bill 5434;
Calendar 547, House Bill 5196; Calendar 548, House Bill
5533; Calendar 549, House Bill 5387; Calendar 550, House
Bill 5471; Calendar 551, House Bill 5413; Calendar 552,
House Bill 5163; Calendar 553, House Bill 5159.

Calendar page 19, Calendar 554, House Bill 5164.

cd
SENATE

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May 5, 2010

Calendar page 20, Calendar 556, House Bill 5498;
Calendar 557, House Bill 5270; 559, House Bill 5407; 562,
House Bill 5253; and House Bill -- Calendar 563, House
Bill 5340; Calendar 567, House Bill 5371; and Calendar
573, House Bill 5371.

Mr. President, I believe that completes the items

THE CHAIR:

Mr. Clerk, could you please give me on Calendar 567,
do you have 5516, sir?

THE CLERK:

What -- what calendar?

THE CHAIR:

567 on page 22.

THE CLERK:

It's 5516.

THE CHAIR:

Yes, sir. Okay.

Machine's open.

THE CLERK:

An immediate roll call vote has been ordered in the
Senate on the consent calendar. Will all Senators please
return to the chamber. Immediate roll call has been ordered in the Senate on the
consent calendar. Will all Senators please return to the chamber.

cd
SENATE

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May 5, 2010

THE CHAIR:

Have all Senators voted? Please check your vote. The machine will be locked. The Clerk will call the tally.

THE CLERK:

Motion is on adoption of Consent
Calendar Number 2.

Total number voting	35
Necessary for Adoption	18
Those voting Yea	35
Those voting Nay	0
Those absent and not voting	1

THE CHAIR:

Consent Calendar Number 2 passes.

Senator Looney.

SENATOR LOONEY:

Yes, Mr. President.

Mr. President -- Mr. President, before moving to adjourn, I would like to ensure the entire chamber will wish Laura Stefon, Senator McDonald's aide, my former intern, a happy birthday.

And with that -- and with that, Mr. President, I would move the Senate stand adjourn

**JOINT
STANDING
COMMITTEE
HEARINGS**

**EDUCATION
PART 2
318 – 666**

2010

good evening.

I'm Don Fiftal. I'm superintendent of Darien Public Schools. And I'm here to speak on behalf of House Bill 5425. That's the bill that's seeking to clarify when there are issues of dispute between school districts and parents that the burden of proof will rest with the party requesting the hearing.

I'm here speaking not just as Don Fiftal, superintendent. I would let you know that my board of education is very strongly in support of my appearance here before you today. I'm speaking also on behalf of the Fairfield County Superintendents Association of which I am a member. And I'm also speaking on behalf of the Connecticut Association of Public School Superintendents of which I'm also a member.

House Bill 5425 addresses an issue in special education that interestingly despite the fact that there have been due process protections throughout the course of the individual -- with disabilities education act, that federal act. It's very interesting that no where along the way was the issue of burden of proof addressed in those regulations until finally, unsurprisingly, in 2005.

The United States Supreme Court came forward with a decision, Shaffer versus Weast. And, in 2005, the Supreme Court ruled that the party requesting the hearing, the special education hearing, bears the burden of proof in any dispute between the parent and the school district.

Now that seems simple and seems pretty fundamental, but it was necessary to make this clarification at the Supreme Court level. And

the Supreme Court was decisive in ruling that because IDEA had been silent on the allocation of burden proof that the ordinary default rule applies, whereby the party that's seeking a claim bears the burden of proof regarding the essential aspects of their claims. And the element is fundamental in our judicial system.

And across the country in state after state, except in Connecticut and I think one other, the case is that burden of proof rests with the party initiating the action, but that's not the case in Connecticut. And so within the year after the issuing of the Supreme Court decision, our Commissioner of Education at time, Betty Sternberg, issued a circular letter that explained that until school districts' concerns were addressed at the General Assembly that Connecticut's administrative regulation would prevail.

Therefore, this testimony, before you today, is to respectfully gain the support of this Committee to move this forward to the General Assembly for relief of what is Connecticut's maverick burden of proof regulation.

I will just make a couple of comments so that you understand one of the implications of this. It has to do -- in addition with the fairness, it has to do with school districts that have been experiencing mounting costs in special education and affecting regular education due to the hearing process, where you have a backward burden of proof stipulation that will require because the school district, essentially, has to prove itself not guilty of any -- any allegation brought forward by a parent. Whether that has great merit or limited maybe even questionable merit, a school district has to prepare itself quite thoroughly both in its own

administrative operations and working with attorneys.

And so that's brought us to a point where tens and tens of thousands of dollars are now being expended within a process. And it's also pushed an increase in the number of settlements I believe. It's happened in my own school district where sometimes we'll say for a business decision rather than spend those tens and tens of thousands of dollars amounting to 60, 80, 100,000 dollars that we will settle for \$25,000 for a out-of-district payment, for example. Not because we believe that our program is inappropriate but only because of business decision that we've been sort of cornered into.

So this is the thing that has, I think, gotten superintendents attention and over the course of the last few years has become a major issue among our -- my peers. So it's not a coincidence that the cost factor for school districts has risen considerably as a result of this.

So on behalf of the Darien Board of Education and Fairfield Superintendents and the Connecticut Association of Public School Superintendents, I urge this Committee to reeminate -- remedy this situation, report favorably on this bill, 5425. It will do -- it will bring into compliance with the Supreme Court asked for in 2005. It will do what the Education Commissioner suggested ought to be done in 2006, and it will make the special education due process consistent with the judicial norm in America. And that's that the burden of proof rests with the party initiating the legal action.

So I thank you for your opportunity -- this

opportunity to speak to you, and I'll answer any question, if you should have any.

REP. FLEISCHMANN: Thank you for your testimony. And the reason the bill is before us is because we heard from a lot of superintendents and boards of education that they wanted this sort of relief, and, as you'll hear later tonight, there will be others with other views but we thank you for your testimony.

Are there questions?

Chairman Gaffey.

SENATOR GAFFEY: Good evening. Thank you for coming all the way up here today and testifying.

This mandate that we, in Connecticut law, treat differently than the federal law does, would you say this is the most expensive or close to the most expensive mandate that your district is confronted with year in year out?

DONALD FIFTAL: That's difficult to quantify "the most." I would say it is significant. And judging from the support that its rallied among superintendents and board members, I do think that the -- the tangible results of cost for legal services, costs in settlements that has been rising precipitously has -- has motivated that concern among my peers and among our board of educations. So whether it is absolutely the most or the highest, I couldn't say that sitting here without data, but it is significant.

SENATOR GAFFEY: So it's -- it's within one of your costliest mandates that you have to deal with?

DONALD FIFTAL: In special education, yes.

SENATOR GAFFEY: And is there any evidence in the shift of the burden of proof that you know of, where the legal cost that you referred to are reduced?

DONALD FIFTAL: I'm not prepared to really respond to that.

SENATOR GAFFEY: Well, you mentioned legal cost about two minutes ago and the process that you have to follow right now?

DONALD FIFTAL: I can speak on behalf on my school district. In my school district, our legal costs, settlement costs, have increased where maybe over the course of a year, we are in the multiple hundreds of thousands of dollars now, and that, you know, is relative to the size of my district, 45 -- 4700 students about 450 special education students. And that increase has far outstripped increases in other areas of the budget. It can be 10, 12, 15, last year our special education budget increased 22 percent and this is one of the major line items that contributed to that.

SENATOR GAFFEY: What entity is the public provider of special education services down in your area?

DONALD FIFTAL: What entity?

SENATOR GAFFEY: Well, in -- in my area for instance, the RESC ACES --

DONALD FIFTAL: Okay.

SENATOR GAFFEY: -- provide such educational services.

DONALD FIFTAL: Ours is Cooperative Educational

Services. It's CES.

SENATOR GAFFEY: Okay.

DONALD FIFTAL: And that's one of many services they provide.

SENATOR GAFFEY: Okay. And do you -- in your experience, in your PPTs where the parents or advocates are present and arguing for services other than what are offered by that particular RESC. What is your understanding of why they push for a private provider, for instance, as opposed to having RESC-delivered special ed services.

DONALD FIFTAL: Well, and it -- I would point out that many -- most special education services are provided right in our school district. We have an excellent array of programs. CES is one outside provider that we turn to, but the vast, vast majority, 90-something percent of our -- maybe 95 percent are educated in Darien. And I think part -- part of it is the sentiment on the part of any parent to want the very best for their child, but there is -- what's built into the law and IDEA is -- is the standard of appropriate education.

And that's probably never been adequately defined at the federal level and is the subject of a lot litigation, a lot of due process. And to be in a dispute with a parent about appropriateness when the parent is thinking of the very, very best of programs for their child or what they would perceive. There's also the perception that if it's in an outside provider -- sometimes when you bring in your expert consultant from the outside, there's this image of it being a more knowledgeable person or an expert, but that's not necessarily the case in actuality.

And We spent a lot of time to assure that the people, the programs, that we have for our kids are appropriate and is the best that we can provide within the reasonable limits of the financial capability of community, and that actually is a standard that's no different for all children in all programs in our school district. It's an attempt to do that for every child. That's the standard that we work by, but sometimes if I were any individual parent, if I had an ability to use an avenue of litigation to get something more for my child -- and I'm not talking about special education -- special ed is the context. I think the issue is due process. I think the issue is burden of proof and where does it fairly lie.

The school district recently, this year, we filed for a hearing in a case where we had a dispute. And I have no qualm with the fact that the burden was on us to show that we were correct in the position that we were taking, but it happened that in a prior hearing two years ago, we had that same burden. So whether we file or whether we were being filed upon, the burden was the same for the school district; and, therefore, the expense became something that was -- could be manipulated by, forces outside and by advocates outside and consultants and specialists that come in and make claims. And just the making of the claim, just stating it, is enough to trigger the process that leads to a hearing.

SENATOR GAFFEY: Thank you very much for your testimony.

Yes, Representative Heinrich.

REP. HEINRICH: Thank you, Mr. Chair.

Good evening.

Would you say if this were to become law that the bulk of savings would come from not having legal process, or would your bulk of your savings come from fewer services?

DONALD FIFTAL: I'm not sure that either would be the result. I think the savings would evolve for the fact that -- whatever party initiated the action would have to be certain that on their part they brought to the table a claim that truly was credible, verifiable, and significant.

And that sometimes when there's an ease by which you can be forward a claim, if I were to decide that -- I was a neighbor of yours and your dog was a nuisance. To just say your dog is a nuisance and put you in the position of having to defend and prove that -- prove your innocence or even before I presented my case as to why I felt that way, would put me in a position to be tempted sometimes to not seek remedies and solutions and mediations but keep going to the mat because I'm in a position to force you to prove your case and that you have to rely on a much greater pocket of resources in order to do that.

And so I think over time, this would serve the purpose of reducing, modifying the amount of money that school districts put into cases. I don't think it would inhibit cases where parents or school districts had very legitimate worthwhile claims that -- do need to be adjudicated, but it would put in a -- in question those situations where people are just trying to push the envelope some.

REP. HEINRICH: Just one more question,

Mr. Chairman.

And just so I'm totally clear, if the burden of proof falls not on the school district but on the parent, then they would be responsible for the court costs?

DONALD FIFTAL: I don't believe so and -- and this bill doesn't put the burden of proof on the parents. It puts the burden of proof on the initiating party. I think that's an important distinction. Now most often that would be a parent, but I don't think it necessarily is a determination of court costs. I think that that's -- that's a different question.

In other words, if you're saying that court costs for the school district would be picked up by the parent if they weren't able to prove their case, I don't believe that this bill is suggesting that. I wouldn't suggest that either, if I understood your question?

REP. HEINRICH: So, perhaps, I misunderstand then. So what would this change then if it doesn't change court costs and it doesn't change services?

DONALD FIFTAL: I think it changes the field whereby now there is a presumption of inappropriate servicing to some degree. There's a perception of that.

REP. HEINRICH: Okay.

DONALD FIFTAL: Of school districts and -- because the burden of proof always resides on the school district to prove itself.

REP. HEINRICH: But didn't you testify earlier that it's been very costly for you to have to prove your innocence?

DONALD FIFTAL: Yes, because you have to -- you have to be sure, absolutely, every I and every T is crossed or doted that the creation of the evidentiary binders, the preparation of witnesses, the time taken from either special ed directors or teachers or with your attorneys, all ahead of time even before we have access to know how substantial a parents' case may be --

REP. HEINRICH: Okay.

DONALD FIFTAL: That -- that may be time that it is not necessary to put in. If, let's say, early on a hearing officer had an opportunity to decree after hearing the parents' case that, perhaps, the parent did not have a facial -- the facial evidence that was compelling enough at that point in the hearing, for example.

REP. HEINRICH: Okay. I believe I understand much better. Thank you very much.

DONALD FIFTAL: Okay.

REP. HEINRICH: Thank you, Mr. Chairman.

SENATOR GAFFEY: Thank you, Representative Heinrich.

Senator Fonfara.

SENATOR FONFARA: Thank you, Mr. Chairman.

Good evening, Mr. Fiftal.

Can you -- I'm over here.

SENATOR GAFFEY: Over here.

SENATOR FONFARA: Straight ahead.

DONALD FIFTAL: Oh, hello, Senator.

SENATOR FONFARA: Good evening. Can you -- I'd like to bring this back to a much simpler level.

If I had a child in the school system and my child is receiving special education services and I believe that for one reason or another the school is not meeting the requirements under the law, with this change, are you suggesting that I would then have to -- if I wanted a hearing on that -- I would -- the burden would be on me to prove that you're not meeting what the law requires?

DONALD FIFTAL: Well, the law provides a number of safeguards before we ever get to any hearing standpoint. In terms of discussions, opportunities to meet, opportunities to mediate if that's necessary, bring in an objective mediator if it goes to that point, but it would mean that if you wanted to file for a hearing -- just as when I wanted to file for a hearing in a case this year -- it means that the burden would be on me or on you, as the parent, to demonstrate that -- that the case that you had was a substantial case.

SENATOR FONFARA: Testified, as I -- if I heard you right, on circumstances in when -- when consultants are brought in and those factors are adding to the cost of the system to defend those matters and to meet the burden of proof, but it seems to me that these kinds of issues where a parent is not bringing someone in, is not seeking outside counsel or consultants, what have you, but merely seeking to have a hearing -- and I don't know what that involves but -- where they want a more formal process for asking that whatever the law is that it be

brought to bear for the benefit of the child that the burden be shifted back to the parent under those circumstances seems to me to be a little bit along the lines of David versus Goliath in that circumstance. Where you have -- full resources of the superintendent and the principal in other -- other people under the employ of the school system against a single parent or parents?

DONALD FIFTAL: Well, I think in terms of procedural process, there's a lot to balance out the issue. If it's -- if what you're asking is about David and Goliath with regard to resources, a parent may or may not have the financial ability to carry forward. That's a little bit of a different issue. That's an important issue I think in judicial practice, but I don't know whether burden of proof is the area to solve that issue. Whether I am a -- a -- in a position, as a parent, to hire an attorney or not hire an attorney, I don't know if that should make me subject or not subject to burden of proof.

If you follow what I'm trying to say there?

SENATOR FONFARA: I'm afraid I'm not convinced to be perfectly honest with you. I'm trying to follow your point. And I think your early argument may make some sense in terms of how costly this can be and what the burden is for you when there is someone who is using every resource available. But I think, to the mother of the parents who are trying just to have their child receive adequate special education services, not employing every avenue available to them, but just what the law is. And they don't feel that that's happening. And I would hope that you could envision somewhere in the state that that might be the case?

DONALD FONFARA: Well, it would because I think in the regulations whether it's IDEA law or 1076. Parents have -- and students and parents have a tremendous number of procedural safeguards. And -- and I think these safeguards, usually, are able to solve disputes and in the vast number of cases are able to resolve disputes but not always. And in a growing number of cases, parents are bringing in claims that are not supported at the table. And, yet, the school district rather than hear and be provided the evidence -- and significant evidence -- and maybe a hearing officer requiring first that the parent provide enough evidence to go on first and present their case, it's the school district that goes on first and presents its case to prove that it's not guilty as charged. And that's just a -- it seems to -- I don't know how unique it is in American judicial systems, but it seems to be fairly unique. I think 48 out of 50 states do provide a burden of proof requirement where all requirement for burden of proof -- the initial requirement of burden of proof rests with whoever initiates. And that's just is a fundamental that we think applies here.

I do understand what you're saying, you know, in America, you know where is it that -- you know where does a person turn who may not have the resources. I think in other ways, we provide the safety net for families that may not have those resources.

SENATOR FONFARA: I just wondered, Mr. Fiftal, there isn't a distinction to be made between the circumstance in which you brought to our attention and Chairman Gaffey has enlightened me on, versus the one that I put forward.

Thank you for your testimony.

DONALD FIFTAL: You're welcome. Thanks for your question.

REP. WOOD: Thank you, Mr. Chair.

I just would like to welcome Don Fiftal, he's the Superintendent from the district I represent and thank you for making the drive up here.

I do have a quick question.

Is the rising cases that all the school districts you represent as superintendent of the Fairfield County superintendent, are you seeing a rise consistent across all the districts?

DONALD FIFTAL: According to superintendents, it's very consistent. We, recently this December, had a -- what was to be a legislative breakfast on a variety of topics that was attended by between 55 and 60 superintendents, board chairs and some legislators in the area. This topic came forward and the entire legislative breakfast was devoted to a discussion on this one subject. It's the topic that's risen to the top of the area of concern for superintendents and school boards.

REP. WOOD: Thank you, Mr. Chair.

SENATOR GAFFEY: Have you any further questions?

Thank you very much for your testimony.

DONALD FIFTAL: You're welcome.

Thank you for the opportunity.

SENATOR GAFFEY: You're welcome.

Nancy Prescott followed by Tim Cipriano. Is Tim here?

Tim, you're next.

NANCY PRESCOTT: Good evening.

Good evening, Senator Gaffey, and other members of the Education Committee.

My name is Nancy Prescott. I am the executive director of an organization called the Connecticut Parent Advocacy Center. I have submitted written testimony to you, and I'm going to just take a few minutes tonight to highlight a few things that I think might give some context based on some of the questions that were raised here earlier.

I'm here in strong opposition to section 3 of Raised Bill 5425. The section that pertains to the burden of proof for families of students with disabilities.

First, if you haven't had an opportunity to read my testimony, let me just say that in my position for the past 28 years, I have worked to provide -- with my staff, provide training and information to families who have children with disabilities across the state of Connecticut. We do that as part of national network of centers that currently exist in every state in this country and our sole focus is helping families of children with disabilities understand what their rights are under the special education law, IDEA, and to work collaboratively with their local school district to make sure that they get the services that their children need.

The first thing that I would like to call to

your attention is that in our experience without question and this is not only true in Connecticut but nationally, the majority of parents who have -- are seeking services from their local school district wish to resolve any differences of opinion which might arise about the appropriateness of services that are discussed at the PPT table. One of the things that we're particularly proud of in our efforts nationally to help bring families and schools together is that when we look at our outcome data every year, last year 84 percent of parents who accessed the information that we provided through our centers nationally said that we were helpful in working -- in -- in getting information to families and to schools so that their were able to resolve their disagreements, and that is really where the majority of parents want to be for a number of reasons.

But I think that when we hear -- rise in cases being brought to local school boards wanting to sue the district for not getting services that that is a very small, small percentage of families. Not to say that there shouldn't be or couldn't be more, but it really is a small percentage.

We have about 70,000 children currently receiving special education services in Connecticut. And, to my knowledge, I spoke with head of the Due Process Unit just this afternoon at the State Department of Education, the increase in the number of cases that are going to due process hearing has not increased dramatically over the past several years. What has increased are the number of cases that are settled and don't go the full route of coming to resolution. So that's the first thing that I would like to call to your attention.

Over the course of a year, we probably talk with about 5,000 families in every town in this state and that includes not only communities, like Darien, but communities like Bridgeport, Wethersfield, Putnam, Barkhamstead. You name it. So that's the first point I'd like to make.

The second point I'd like to make is I cannot stress to you enough that while there are many procedural safeguards, tons of paperwork required in getting special education services for children that -- that information is only as good as people know how to access and use it. And the majority of people who call us don't know they have the information, don't know what it means and don't know how to use it successfully to sit and have a discussion with school boards who are much better prepared to have that conversation.

And the third point I'd like to make is that I would hope that as you deliberate whether or not you would move forward with accepting this proposal as it is, that you would consider that this puts families at a significant disadvantage. Families who are already at a disadvantage for having a lack of information about how to work with school systems and how to respond when a school system says to them, if you don't like what we have to offer, take us to due process. That is not a one-time comment that is something that we hear quite often.

We would hope that you would retain what we feel is the obligation of the school districts to be accountable for the programs and services that they're offering and encourage in the spirit of the education community that's looking forward in our state to

increase the outcomes for all kids, including kids with disabilities, that we would have our district spending time on working to engage families in this kind of discussion, helping them understand the process that's involved and leaving the business of implementing and evaluating programs so that kids with disabilities are having positive student outcomes just like we want all of children to do.

So thank you very much for your time, and I'd welcome any questions.

SENATOR GAFFEY: Thank you, Nancy.

Members of the Committee have questions for Nancy?

Representative Mikutel.

REP. MIKUTEL: Not so much a question, but it's -- from the tone of your voice, it seems like there's quite an adversarial position here between you and the boards of education.

Aren't we working for the same goal? Aren't the school systems don't -- aren't they working for the best interest of the child? So what's -- why -- why all the adverse -- all the contention in -- in this matter?

NANCY PRESCOTT: I think -- I'm a former school teacher, parent of two children, one with a disability, and I think that part of the contention comes from turning a process of discussion and sharing of information to work towards getting a public education for our children is oftentimes boiled down to the law.

So I taught special ed before we had a law and so there was more of a give and take and an

openness and sharing of information. Now it is sort of mushroomed so we hear about families walking into a PPT unbeknownst to them with a district bringing legal representation at what is not a formal legal proceeding but is what is intended to be a discussion of an exchange of information so we can, together, develop a program. That really is the intent, and I think that, again, when you feel as though people have more than you do it doesn't feel equal. It doesn't feel like a partnership, which is what this is intended to do. And, unfortunately, in probably too many situations, that's the case.

Good question, though, thank you very much.

REP. MIKUTEL: I'm just troubled by this, Mr. Chairman, how this is all coming down, and there's got to be -- I mean we got to have -- try to balance the needs of both the board of ed and -- and the parents here without -- without breaking the board of ed budget.

SENATOR GAFFEY: That's what vexes the -- we'll continue to try to work through this dilemma. This is one of toughest issues in educational law in this state that there is. It's a tough, tough, balancing act.

Further questions?

Yes, Representative Conway.

REP. CONWAY: Thank you, Mr. Chairman.

As an -- as an advocate, have you represented parents in which they're trying to get their child out-placed because they feel there's a lack of services within the district?

NANCY PRESCOTT: Well, I guess, let me first

clarify that. In our organization, we don't represent families. They call us, come and meet with us, we see them, we provide special development for them, but we don't actually represent them either at due process or at mediation or -- or -- our job is to give them the information so that they can advocate for their children.

So that some parents certainly call us and feel that is appropriate for their child to receive services out of the school system. They feel the school isn't prepared, at this point in time, to give their child what they feel will meet their child's needs. That's their right. We try to educate them about their options that are open to them. Many parents don't understand that services can be delivered and many times, in many situations, much better within the context of a general educational classroom in their neighborhood public school; and there are a lot of good reasons to do that.

The law does say that that decision about what is appropriate, is it the general education classroom or is it the out-of-district placement, is a joint decision made by the district and the family together. There should be that conversation back and forth, weighing the pros and cons and how could we -- if you feel that you don't have what your child needs right here, how could we bring those services here so that your child could attend the schools that their brothers and sisters do.

REP. CONWAY: Thank you, Mr. Chair.

SENATOR GAFFEY: Representative, any further questions?

Senator McDonald.

SENATOR MCDONALD: Just briefly, Mr. Chairman, I know the hour's late, and I couldn't get myself organized fast enough to ask Superintendent Fiftal the question but maybe you know the answer.

His testimony seemed to imply that the current burden of proof is established by a regulation of the board of education. Is that technically accurate to your knowledge?

NANCY PRESCOTT: I think that it's proposed that it be changed in statute --

SENATOR MCDONALD: -- state statute, right, but currently is it --

It's in regulation?

Okay.

So if it is in a regulation -- and I just don't know the answer to this, is there -- has there been any effort to have the State Department of Education change it by regulation, promulgated by the Department and reviewed by the Regulations Review Committee of the General Assembly, if you know?

NANCY PRESCOTT: Not to my knowledge. I can only say, informally, today I was with several members of the State of Department of Education and they said that they were very definitely not in favor of -- of changing.

SENATOR MCDONALD: I understand that but, you know, sometimes people come to us to ask us to --

NANCY PRESCOTT: Yes.

SENATOR MCDONALD: -- by statute, overrule a regulation, when sometimes the easiest way would be to go through the front door and change the regulation. I'm just -- I was just trying to figure out what -- what's been happening in the background, if you will, before we got here today?

NANCY PRESCOTT: There's -- we don't know really where this came from. It just came to our attention. To my knowledge, it did not come from the Department at all. I believe that it came from districts feeling this burden of fiscal -- the fiscal burden.

SENATOR MCDONALD: Thank -- thank you.

SENATOR GAFFEY: Thank you very much for your testimony.

NANCY PRESCOTT: Thank you very much.

SENATOR GAFFEY: Tim -- Tim Cipriano followed by John Molteni. Is John here? John Molteni? He is here.

John, you're next.

Is Suzanne Letso here? Okay. John's here.
Is Suzanne here? Suzanne Letso?

Okay, great. You're on double deck.

Tim, please proceed.

TIM CIPRIANO: Good evening, everyone. I'm here to speak on Bill 520, the Governor's proposed cuts to healthy school food funding.

HB 5020

In New Haven, like many other school district or maybe large school districts in the state, school districts are required to contribute

Thank you very much for taking your time --

TIM CIPRIANO: Thank you very much.

SENATOR GAFFEY: -- to be here today, appreciate it.

John?

John's followed by Suzanne, and then Missy Olive. Is Missy here?

Missy, you're on double deck, okay?

John?

JOHN MOLTENI: Good evening. Thank you members of the Education Committee for hearing my testimony today.

My name is Dr. John Molteni, and I serve as an assistant professor and director of the Autism Spectrum Disorder Initiative at Saint Joseph College in West Hartford, Connecticut. I also serve as the president of the Connecticut Association for Behavior Analysis, which professional organization from whom you'll be hearing later this evening.

I'm here to support House Bill 5425, AN ACT CONCERNING SPECIAL EDUCATION, particularly section 2, which stipulates that applied behavior analysis services that are provided to students as part of their individualized educational program will be overseen by a board certified behavior analyst, a board certified assistant behavior analyst, under the supervision of a BCBA or other professionals whose scope of practice includes applied behavior analysis.

This section provides an important step in securing quality services for children with special needs by qualified individuals who have met specific education and training requirements. Evidence to support these behavioral interventions and the education training and treatment of individuals with and without disabilities has grown.

In over 40 years of basic and implied research, the impact and procedures developed from the principles of applied behavior analysis when implemented with fidelity have led to improvements in behavioral functioning, rates of learning, acquisition of adaptive living skills, spontaneous communication, social skills, development and staff performance and self-regulatory behavior. With the increase and prevalence in autism spectrum disorders and related disabilities over the past decade, greater need for improved educational and behavioral services across the lifespan has been a byproduct.

Programs utilizing applied behavior and analytical procedures are now housed within public school settings, private school settings, foster care, and home-based settings. The demand for individuals of training and applied behavior analysis is also increased as it has been identified by several organizations as having a significant evidenced base and one of the only evidenced-based interventions for children with autism, which includes the National Autism Center Report in 2009, the National Research Council Report in 2001, and the New York State Department of Health Early Intervention Program Report in 1999.

Currently, various state organizations include

the Department of Disability Services, Connecticut Birth to 3, and recent legislation including Public Act 09-115 of last year, have recognized both applied behavioral analysis services, the certification of behavioral analysts and assistant behavior analysts as part of their reimbursement programs.

It also has been -- a certification of behavior analysts has also been recognized in multiple states across the country to support service needs of individuals with special needs.

This bill will allow students to receive services from individuals with a level of education and training that meet agreed competencies in applied behavior analysis. Certification also provides protection to consumers, including school systems, parents, and students, by providing a mechanism to evaluate the qualifications of an individual and set the standard of professional behavior that can be evaluated and acted upon in cases of misconduct.

Currently, Saint Joseph's College has a program in applied behavior analysis at the graduate level and we are working -- recognize that other programs within the state including Eastern Connecticut with their assistant level behavior analysis program and some developing programs at Southern Connecticut and Western Connecticut State Universities.

In addition, we also support -- excuse me -- we also have programs in the Springfield area that are run through the River Street Autism Program in Hartford, Connecticut.

Thank you for your time today.

SENATOR GAFFEY: Thank you for your testimony, and I'm looking forward to acting on this this year. It's been -- we took a real long hard look at this. You know, the Attorney General did a study for us and reviewed that, and I'm satisfied it's time to proceed. So I thank you coming forward tonight and offering the Committee your testimony for the record.

Any questions for John?

Thank you very much, John.

JOHN MOLteni: Thanks so much.

SENATOR GAFFEY: Suzanne?

Followed by Missy.

SUZANNE LETSO: Good evening, Senator Gaffey, Representative Fleischmann, and members of the Education Committee.

First, I'd like to thank you very much raising section 2 of this bill, which I'm primarily here to support this evening. I am also in opposition of section 3, but my comments tonight are primarily in relation to section 2.

First, I'd like to point out that this legislation, as it's crafted, would not mandate ABA methodology be used for any child with autism. Simply stated what it would do would be in the event that a planning and placement determines that ABA services have a place in a child's IEP, then, and only then, would they be required to either: Utilize a board certified behavior analysts, a board certified assistant analysts under the direction of a behavior analysts, or another qualified professional already licensed or

HB5425

certified within the State of Connecticut who has behavior analysis within their scope of practice, for example, a school psychologist or clinical psychologist.

The one change I would request would be that we change the language to include all children with special needs. I'm here tonight representing myself as a parent, my school, the Connecticut Center for Child Development, the Connecticut Association for Behavior Analysis and the Association for Professional Practice. And, at all levels, we see children who don't simply have a diagnosis with autism.

My son is dually diagnosed with a -- diagnosis of MR and autism, and there are many other children that receive services in Connecticut and throughout the country that aren't only children with diag -- diagnosed with autism. Having said that, that does represent the majority of the students that we work with in Connecticut at this time.

I think it's really imperative that school districts receive direction from this body in terms of who's qualified to provide services. I think -- I think we're doing our school districts a service as well as the children they serve. Without that guidance, they're left to fumble and try to decide who's qualified and who's not.

I think -- I think this is really important legislation. I do hope it will be acted favorably upon this year. And I think, as a society, we make the assumption that there is a necessity for a credential and there is a necessity for training. And for those that would argue that there are people who are highly qualified who have neither, I can't really disagree with that. Except to question

how much more successful they would be in helping our students if they had both that artistic craft working with children, as well as the education and experience that goes along with it. They're very few other professional disciplines, even manicurists have to have a license to operate in the State of Connecticut.

Last year, when I sat before you, there were a 134 certified behavior analysts on the registry residing in Connecticut. Today, there are 185. That's not including the people who travel into Connecticut from out of state or those other professionals who have another credential and training in behavioral analysis.

In truth, we don't know how many people are serving our children, but I can tell you this, today, based on the numbers provided by the State Department of Education, there is approximately one behavior analysts for every 20 students with autism, who might be the majority of those people we would serve.

And if the rate of increase continues -- only at the rate that it's at right now and we can reasonably expect that it will increase because of programs like Saint Joseph's and Elms and the other programs that are in place -- but if that doesn't happen two years from now when this legislation would be enacted, there would be at least 295 certified behavior analysts on that registry, which equates to 1 in 15 -- 15 children for each provider.

So I open myself up to questions to you if you have any, but I really, deeply appreciate not only your efforts but also the efforts of Attorney Blumenthal, Christopher Lyddy and

Kathy Abercrombie, who've been instrumental in helping this legislation come this far.

REP. FLEISCHMANN: Thank you for your testimony and your advocacy. And do I take it from your testimony that you are completely comfortable with the certification of behavioral analysts that's provided by a board that isn't in this State but that has been doing this work for a number years elsewhere?

SUZANNE LETSO: I have to say I agree with Attorney Blumenthal's, sort of, assessment of the situation, if you will, where if we had the funding and the resources -- if neither time nor money were an issue and Connecticut could regulate and design their own programs and we didn't have at least 600 children today, maybe more, receiving services from people who we don't believe have any credential whatsoever, then I would say lets take whatever time, be it five years, ten years to put this in place.

But money is an object and time is an object. And because of that I think that this is a really excellent first step. It affords consumer protection, and it affords protection to our school districts, who, frankly, are at risk for lawsuits if we don't help them figure out who is the real deal.

REP. FLEISCHMANN: Thank you. Fair points very well made.

Other questions from members of the Committee?

Representative Lyddy.

REP. LYDDY: Thank you, Mr. Chair.

And thank you, Suzanne, for being here tonight and offering your testimony.

I really appreciate the fact that you pointed out that this only applies in certain circumstances, where ABA is specifically identified in the 504 Plan IEP because there was a little confusion about that.

I'm very familiar with this bill, as I've worked with you and other's on it. However, I'd like to hear from you as an educator. You mentioned that you're in opposition to section 3. Can you just sum up why, as an educator, you would be in opposition to that?

SUZANNE LETSO: Oh, I'd be delighted.

First, I would like to say I do support public schools. And we work with many public schools very successfully as a private provider. And that a superintendent or a special ed director can come and tell us that they have a 95 percent or better approval rating, any of us who are judged in the court of public opinion, would, frankly, kill for an approval rating that high. It's really wonderful.

So I think they are to be commended for that, but there are times when there is disagreement. And I would -- I would sum it up like this, as a parent, if I took my child to a restaurant and they got food poisoning and I had to take them to the hospital and report that food poisoning. My responsibility is to identify where I ate and the symptoms that I see in my child that are problematic and any other information that I can to help the authorities determine whether or not that restaurant is responsible for my child getting sick.

To change the burden of proof to the parent in the case of Special Ed, I think, is similar to

saying, it would now be my job to become both a microbiologist and a food scientist, that I would not only have to prove beyond a shadow of a doubt that my child ate there, which certainly is my burden anyway, but also whether or not it was -- is there a problem with a food chain; is there a problem with the refrigeration; is it poor food handling. And I don't have access to all of that information. Without assistance from the school district sharing information who have far more resources than I do, I think it becomes impossible for a parent to feel, legitimately, like they have the resources to go and advocate on their child's behalf. And I understand that cost is an issue. I do, but I -- the only place that I see cost savings in this comes from chilling parents from ever going due process in the first place.

That's where the cost savings would be because once that process is started, the legal fees are going to be there anyway. But if parents are afraid they can't climb that mighty hill, that's made just a little bit higher, particularly those who don't have the resources for an attorney, it really does become an impossible burden.

REP. LYDDY: Thank you for that. That was a beautiful analogy. I think I'm going to have to use it sometime.

SUZANNE LETSO: Feel free.

REP. LYDDY: And I think you highlighted the power differential between the schools and families, and I think that's very important to also realize. Thank you.

Thank you, Mr. Chair.

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REP. FLEISCHMANN: Thank you, Representative Lyddy.

Other questions from members of the committee?

If not, thank you for your time and testimony.

SUZANNE LETSO: Thank you.

REP. FLEISCHMANN: Next up is Missy Olive to be followed by Amanda Teller.

MISSY OLIVE: Hi, honorable Chairman and members of the committee.

My name is Dr. Melissa Olive, and I reside in Woodbridge, Connecticut. I'm a board certified behavior analyst at the doctorate level and I've been certified since 2002. I'm currently employed by the Center for Autism and Related Disorders. We call ourselves CARD. And we are a worldwide agency that provides a wide arrange of services.

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We are also an approved provider for continuing education in board certification of behavior analysis. Prior to working at CARD, I was an assistant professor at the University of Texas at Austin and the University of Nevada at Reno where I was responsible for training special education teachers to work with individuals with disabilities in a variety of capacities, including special education classrooms, inclusive classrooms, autism units, and so forth.

I was also responsible for developing and implementing and overseeing the UT Austin program for training board certified behavior analysts. In addition to all my professional credentials, it's important to know that I have a 30-year-old brother with autism, who moved in with me when he was 13 years old.

I've been responsible for overseeing his care since 1993.

I want to thank each and every one of you for your work on this important bill and for your commitment to the well-being of children with disabilities. I'm in support of section 2 of this bill, as it relates to the delivery of ABA services within schools. My brother would have benefited from such a bill many years ago.

As you already know, a number of studies have shown that specific instructional techniques are effective for children. And a most recent review, Eikeseth noted that children who received ABA made significantly more gains than a controlled group of children. And this has been documented by others as well. It's in my written testimony that you have.

Additionally, research has shown that ABA is also effective for children with other types of disabilities. For example, Fisher and colleagues demonstrated that a behavior intervention plan, based on ABA, was effective for an individual with cerebral palsy and mental retardation.

Hasazi & Hasazi, in 1972, used ABA techniques to successfully address math skills for a child with digit reversal. Rasmussen & O'Neill used ABA techniques to successfully address the problem of behavior students diagnosed with emotional behavior disorders.

In summary, research has demonstrated that ABA can produce substantial gains in children. Thus, it's an in appropriate instructional method for children to receive. As such, those who teach children who need ABA should be appropriately trained to implement this

scientifically proven instructional strategy.

As you may already know, many school districts employees fail to receive the training necessary to implement ABA. This is not a fault to the universities and alternative training programs that educate them but rather due to a system that limits the total hours an undergraduate may be required to take.

While I'm in support of section 2 of this bill, I must indicate my opposition to section 3 of this bill, relating to burden of proof because of the expense incurred, LEAs rarely initiate due process hearings. Most often it's the parents or the guardians who file for due process. If the burden of proof is shifted to the party requesting the hearing, then a substantial financial burden is placed on the family or guardians. Family members are not experts on teaching methodology, let alone on the requirements of IDEA, the law.

In order for a family to meet the burden of proof, the family would have to hire educational experts and attorneys to assist them. If a family could afford such extravagances, they would be most often have pulled their child out of public education and paid for the education privately.

As a family member, who has been through a due process hearing for a loved one, it's an extremely stressful event. Requiring burden of proof on top the existing stress would be detrimental to most families who lack the funds to follow through with the hearing.

Again, I thank you for your commitment to individuals with disabilities. I appreciate your time and please do not hesitate to contact me if you have questions.

REP. FLEISCHMANN: Thank you for your time and your testimony.

Are there comments or questions from members of the Committee?

If not, thank you.

Next up is Amanda Tellier to be followed by Amanda Mossman-Steiner.

AMANDA TELLIER: Hello. My name is Amanda Tellier, and I'm here to offer personal testimony in support of House Bill 5425, section 2, while strongly opposing section 3.

First, let me comment on why you should support section 2. I'm the parent of a child with autism and ADHD. I consider this a full-time job because, despite the joys of this role, it's incredibly stressful and requires me to have qualifications unmatched in any field. To prepare for this job, I've taken graduate level course work in special education, attended countless conferences and workshops, read books and journal articles on everything from brain development to social skill strategies to behavior modification.

At the same, I've had to develop knowledge about props from the Ghostbusters movies, the many uses of bondo, strategies for customizing vintage VW beetle engines, and any other current interests to take over my son Kaleb's thought processes. However, all this knowledge does not make me qualified to oversee applied behavior analysis services.

For the past two years, what I've not had to do is teach my son how to sit for more than a few minutes at a desk, or teach him how to add

exponents, or teach him how to develop and test a hypothesis, or teach him how to find the main point in a paragraph. I've not had to scramble to find childcare so I can go to my other full-time job while my son is isolated at home after being suspended for misunderstood behaviors that manifest from his disabilities.

I don't have to do these things because Kaleb is now in a program that values using research-based methods of applied behavior analysis, overseen by a board certified behavior analyst, who is qualified to oversee behavior analysis services.

Is it so much to ask that school districts employ properly qualified staff to provide or oversee services included in a child's IEP?

I'd also like to comment on why section 3 should be removed from this bill. It was not an easy road getting to where we are in Kaleb's current educational program and one that many families struggle to navigate. Like most families, pursuing due process was not a decision we took lightly. Throughout the lengthy and complicated legal process, my family incurred tens of thousands of dollars in attorney fees and expert witness fees.

Although, we prevailed and regained most of the allowable attorney fees, it was a great financial and emotional burden that already deters many families from using the system to advocate for their children.

Section 3, proposes shifting the burden of proof in special education due process hearings from the school district to the party requesting the hearing, which in almost all cases is the parent. This unnecessary change

would put families at an even greater disadvantage, since school districts already possess the information and expertise regarding a child's IEP.

If school districts do not have the burden of proof, I fear they will be less inclined to cooperate with parents to negotiate an appropriate program and services for the child. Districts may opt to restrict services and draw lines in the sand requiring parents no option but to pursue due process, knowing that the parent will have the burden of proof. This will be especially true as school budgets get tighter and tighter. The result will be an increase in due process hearings for those families who can afford it or a decrease in quality education for those cannot, either is unacceptable.

Parents may never be on an even playing field with school administrators, teachers, special service providers, and consulting staff. At the very least, we should be able to expect that our schools use evidenced-based practices provided by properly qualified staff as the law requires. School districts are responsible for educating our children and should be held accountable to prove their programs are appropriate when in dispute.

Please remove section 3 from Raised Bill 5425 and please support the important provisions in section 2 that will ensure that our children receive behavior analysis from qualified professionals.

Thank you.

REP. FLEISCHMANN: Thank you for your very personal and compelling testimony. I'm sure it's been a difficult road for you and your family, and

I appreciate you sharing.

Are there comments or questions from members of the Committee?

If not, thank you.

AMANDA TELLIER: Thank you.

REP. FLEISCHMANN: I believe next was Amanda Mossman-Steiner, and she'll be followed by Sheryl Knapp.

AMANDA MOSSMAN-STEINER: Good evening, Committee members. My name is Amanda Mossman-Steiner. I work at the Yale Child Study Center Autism Program, and I'm also a board certified behavior analyst at the doctoral level. And I'll be brief here. I believe many of the other main points have been covered. So I'll just go ahead and summarize those.

As have already been stated, many of these, first of all, ABA has a long tradition of effectiveness with a wide variety of population specifically, children with developmental disabilities, including autism. There's been you know, thousands of articles which have been published demonstrating the effectiveness of this approach for teaching a variety of behaviors from academics to self-help to addressing problem behavior and aggression within the school setting.

This bill does not require, of course, that children would need to have ABA services as part of their IEP program. However, for those children that do, it would ensure that those services would be provided at a certain level of quality. Moreover, it's a frequent component of many IEP programs, particularly, for those children who face the most severe.

kinds of challenges, which is often our children of autism spectrum disorders with the most significant areas of need. As more children are being diagnosed with ASD, we do see increasing need for these kinds of services in our schools.

Behavior analysis, the practice of it is not a simple task. It's dealing with all sorts of complex issues relating from teaching a child how to speak, to addressing different kinds of aggression that we might see in a classroom, or self-injury, things that do rise to quite a high level of expertise. It necessitates a particular skill set unlike similar to any other profession out there which we do have specific kinds of credentialing behind.

As the speech pathologists is necessary as part of the IEP program, they would be the one who would oversee that particular portion of the program. As it would an occupational therapist or really any other professional guidance that would be needed for -- to meet the child's specific IEP goals.

Moreover, this is consistent with current Birth to 3 legislation, which does require the certification of a BCBA in those aspects of the program that require that for our children and is also consistent with the new insurance legislation from last year, which indicates that BCBAs are authorized to oversee these types of programs.

So, overall, it seems to be a fairly -- excuse me -- it seems to really make quite a bit of sense. And on top of that it would provide a certain level of protection to schools, parents, and our students to ensure that children are receiving the highest level of quality services that would meet their

particular needs.

Thank you.

REP. FLEISCHMANN: Thank you. And this may have been in your testimony, are you, yourself, a certified analyst?

AMANDA MOSSMAN-STEINER: Yes, that's correct.

REP. FLEISCHMANN: And how long of a process was that for you?

AMANDA MOSSMAN-STEINER: As I understand it, there's two different avenues in which one can pursue a board certified behavior analysts. One is for those individuals who have attended graduate school, and another one is for individuals with only a bachelor's degree.

For my particular avenue, that required coursework throughout my graduate training and then, within that graduate training, supervision by a board certified behavior analyst with a certain level of practicum experience. I think about six months or so of hours in attaining that.

I think those -- those requirements are less so for individuals who would be pursuing the board certified analyst assistant certification that they only need a bachelor's degree and some additional practicum on top of that.

In addition, the bill also specifies that any other professional who of which the behavior analysis is within their scope of practice, such as a school psychologist, should be able to carry out these services.

REP. FLEISCHMANN: Thank you.

Any other questions from members of the committee?

If not, thank you for your time and your thoughtfulness.

AMANDA MOSSMAN-STEINER: Thank you.

REP. FLEISCHMANN: I believe I said we were going to go to Sheryl Knapp, who's juggling three children right now and then come back to Marc Porter McGee.

SHERYL KNAPP: There you go.

Good afternoon -- well, good evening. My name is Sheryl Knapp, and I'm here today to voice my strong opposition to section 3 of Raised House Bill -- House Bill 5425, which shifts the burden of proof at special education due process hearings to the party requesting the hearing.

I'm an independent reading consultant, as well as the parent of an elementary-aged student with an intellectual disability. The birth of my daughter opened my eyes to the enormous untapped potential within students with significant disabilities and prompted me to leave the business world to pursue a career in education.

Every day, I see the struggles parents face to secure and maintain appropriate programs for their children.

The only recourse they have when districts fail to provide appropriate services is due process. And I really want to emphasize that it's a path of last resort that no parent wants to take.

Taking a school district to due process is already a daunting and costly task for parents. School districts are inherently at an unfair advantage in that they have ultimate control over the entire process from the staff members to all the testing and all the other information upon which decisions are made. Districts also have virtually unlimited access to experts and high-powered legal representation, and it's all at the taxpayer expense.

Placing the burden of proof on the party requesting the special education hearing would only exacerbate that the -- this imbalance in power. As in most cases as been discussed, it's the parents who'd be making the request.

Due process hearings would become even more costly and accessible to only the most wealthy, and it would also be unfair. Ultimately, the result is that students would be deprived of ultimate -- appropriate services.

Unless, you're the parent of a child with significant special needs, there is no way to know the pressures we feel every single day regarding our children's educational programs. For students, like my daughter, who's sitting back there, receiving an appropriate education could likely make the difference between her living a maximally independent productive life and being dependent on state and federal services.

Although, it would in no way level the playing field in due process hearings, please at least give families a more equitable opportunity to exert their due process rights.

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Thank you for letting us speak.

REP. FLEISCHMANN: No, thanks needed. It is your right to speak. You're a citizen of the US and a resident of Connecticut, and this is your forum.

Are there comments or questions for the witness?

Representative Bartlett.

REP. BARTLETT: Thank you, Mr. Chair.

Thank you for coming forward. So that's kind of what I wanted to hear, what the hurdles are for the parents. How much would it cost? Or how much does it cost do you think to, you know, go the route as it exists now?

SHERYL KNAPP: You mean a due process suit?

REP. BARTLETT: Yes.

SHERYL KNAPP: Well, fortunately, I've never had to go that avenue, that we've always been able to work everything out with my district. My understanding -- and I know there are attorney's here that could speak to it more -- I think it's 20,000 just to really even start the process right now. And that's really, you know, and, obviously, if you prevail and it goes to final step that, you know, there might be a chance of recouping that, but it's just not feasible option except really for the most wealthy. And, again, it's not something that parents want to pursue. It's, as you know, that last resort when you feel that you have no other recourse.

REP. BARTLETT: So if we change the burden of proof, you really would need an attorney to

challenge that at that point?

SHERYL KNAPP: Right. Well, I know the statistics right now are that parents that come without an attorney have very -- even less chance of prevailing than they do right now. And already with attorneys, I believe, it's maybe 20 percent. It's a very low number.

What it would mean is, first of all, it would make it even more difficult for a parent to file for due process or do a hearing on his or her -- on their own but also the cost of experts because suddenly the burden is on them to prove the program's not appropriate.

You know, if I walk into a store and I slip and I decide that the store is at fault, it's reasonable that I would have the burden of proving that they were in some way negligent. But when I'm talking about a school district, you know, even the most amicable relationships, you know, there's a lot. They're the ones who are doing all the testing. They're the ones that have the records. They're the ones that control the communication and what goes on is very inconsistent across districts. So, you know, it's a different -- different scenario because parents from the get-go are at a disadvantage because they're the outside person who's trying to get information shared with them. So to give them the burden of proof would make it even more difficult.

And I really want to emphasize, it's not -- it's not going to level the playing -- the playing field is not level right now because of the way, you know, that imbalance of power but at least it gives them some chance to exert their due process rights versus if they had the additional burden, you know, that

burden of proof on there that it would really be not only excessively costly -- you know, even more costly than it is now but also, you know, much, much more difficult legally to prove their case.

REP. BARTLETT: Thank you for your perspective.

Thank you, Mr. Chair.

REP. FLEISCHMANN: Thank you.

Any other questions for the witness?

If not, thank you for coming forward, and, by the way, your daughter is adorable.

SHERYL KNAPP: I can hear her. Thank you.

REP. FLEISCHMANN: Next up is Marc Porter McGee to be followed by Jesmin Basanti.

MARC PORTER MCGEE: Good evening. My name is Marc Porter McGee. I'm chief operating officer for the Connecticut Coalition for Achievement Now.

ConnCAN is building a movement of concerned citizens advocating to fundamentally reform our public schools through smart public policies.

I want to thank the Chairs and members of the Education Committee for providing me the opportunity to speak today. I apologize for my froggy throat.

I testify about Raised Bill 5421, AN ACT CONCERNING EDUCATORS AND ADMINISTRATORS.

As you know, this hearing comes just days after Connecticut was rejected from Round 1 of Race to the Top. The quick action by this

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followed by Rick Tanasi.

MARY-ELLEN JOHNSON: Representative Fleischmann and other members of the Education Committee, thank you for this opportunity.

My name is Mary-Ellen Johnson, and I am the president of the Connecticut Occupational Therapy Association. I am here to make some comments and to express some concerns related to House Bill 545, AN ACT CONCERNING SPECIAL EDUCATION.

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Section -- what our concern is with -- is with section 2. Now I've submitted written testimony so I don't feel the need to read it to you. So I'll just make some comments -- excuse me.

We're -- we support the inclusion of applied behavior analysis as an available service. We have no problem with that. I'm the aunt of a number of kids in the family with special needs so I'm all in favor of that children get whatever is available that's going to help them. I'm also definitely in favor of qualified personnel delivering services. That goes across the board for any -- anybody that's going to work with children.

Our concern, as occupational therapists, is in the language that defines applied behavior analysis. Now we know that that applied behavior analysts use behavioral theory as the basis of their evaluations and interventions, but I'd like to point out that the analysis of behavior and the application of interventions to change behavior are not exclusive to those that consider themselves behavior analysts.

Occupational therapy practitioners have used behavioral frames of reference in practice, in

fact, we have an applied behavioral frame of reference. And we have incorporated behavior modifications into our practices since the 1940s. We do activity analysis or task analysis as the applied behavior analysis -- analysts refer to it. We evaluate environments. We make environmental modifications.

Now, that said, applied behavior analysts are not licensed in the State of Connecticut so we do not have a scope of practice law to refer to. The only language that we have is the language that is contained in this, which states that -- which defines ABA as the design, implementation and evaluation of enviro-modifications using behavior stimuli and consequences, including: The uses of direct observation, measurement, and functional analysis of the relationship between the environment and behavior to produce socially significant improvement in human behavior.

Now that's a very broad definition, and it includes a lot of language that is related to behavioral theory that is common to a lot of different professions, including occupational therapy.

As recently as 2008, the Journal Behavior and Social Issues spoke about the initiatives that the International Association for Behavior Analysis has taken towards licensure. And they point out the difficulty of taking the approach attempting to carve out actions that only licensed behavior analysts can perform. And I'll quote them because many of the disciplines used and in some cases are licensed to use the interventions included in model scope of practice documents.

Now, as I said, we agree that --

REP. FLEISCHMANN: Ma'am, I'm wondering if you could help us by sort of summing up where it is your driving with your testimony?

MARY-ELLEN JOHNSON: Our summary is that the language that defines applied behavior analysis is overly broad and that it could restrict the practice of occupational therapy because it could be interpreted that an occupational therapist using behavioral techniques, analyzing environments, you know, using the whole rewards systems, could be said to be practicing applied behavior analysis, but it's part of our education and training.

That we feel would restrict our practice, but it would also restrict, possibly, what consumers have available to them.

And so, we, as I said, we support the inclusion of applied behavior analysis. And we support the definition of the qualifications for those who practice it, but we would like to see the language amended, and we've included amended language in our prepared testimony to strike the definition that is -- we find overly broad.

We think that -- there's no problem at all that the profession defines their own standards for education.

REP. FLEISCHMANN: Thank you. Thank you. That's much clearer and very helpful, and let me say this Committee puts out bills, and then we look at language that folks propose to help us clarify those bills. So we will certainly be looking at the language that you've given us and seeing if we can take what we consider to be a good bill and make it better by making it

clearer.

With that, are there questions or comments from members of the Committee?

Representative Lyddy.

REP. LYDDY: Thank you, Mr. Chair.

Over here and thank you for being here tonight to offer us a little insight. I'm a social worker by trade, and I, too, have been trained in some behavioral modification techniques and whatnot. However, I do hold ABA to a high regard and look at -- to it as such -- a skill set, as well as certification and whatnot that needs to be maintained.

I'm a little confused by your testimony, but I think I'm piecing it together as I'm talking. Are you familiar with the Attorney General's opinion?

MARY-ELLEN JOHNSON: Yes.

REP. LYDDY: Okay. And are you familiar with other states that have also passed similar laws?

MARY-ELLEN JOHNSON: Yes, I am.

REP. LYDDY: And do you feel as though any of those other states have better language?

MARY-ELLEN JOHNSON: Well, I don't think I'm in a position to comment on the language of all the states that have, you know, passed legislation regarding ABA.

REP. LYDDY: And is ABA written into -- are you written into an IEP, where ABA is specially identified that you would be performing those -- those functions?

MARY-ELLEN JOHNSON: We're written into IAPs as occupational therapy. Our concern -- and as I say --

REP. LYDDY: Okay.

MAY ELLEN JOHNSON: Our concern is not with other state's language or what -- if licensure is pursued in this state. That's not our concern. Our concern is just with the language in this particular bill that we feel could be interpreted as restricting the use of behavioral techniques analysis in practice for occupational therapists.

We have occupational therapists who use rewards in all kinds of techniques and -- and assessments that are -- from a behavioral frame of reference --

REP. LYDDY: Certainly.

MAY ELLEN JOHNSON: -- and token economies have been around and -- and it's not unusual for, you know, that to be done.

What we're concerned about is when it's written this way and this is all there is to go on because there is no scope of practice for ABA in this state that it could be used to --

REP. LYDDY: There's no scope of practice for cognitive behavioral therapy either. There's no scope -- I mean, we can list a number whole number of things where there's no scope of practice --

MARY-ELLEN JOHNSON: Right but that's when -- that's when get muddy.

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REP. LYDDY: Well, I don't know that we can legislate everything. I think this is a great attempt to begin making sure that consumers know what they're getting. Now, as a social worker, I've spoken with -- and a legislature, I've spoken with other professionals who don't have as much of an issue with this language so I'd just like to put that on the record.

Thank you, Mr. Chairman.

REP. FLEISCHMANN: Thank you.

Any other questions or comments for the witness?

If not, thank you very much for your taking the time.

MARY-ELLEN JOHNSON: Thank you and please feel free to contact us.

REP. FLEISCHMANN: We may if we have questions about the language you've submitted.

MARY-ELLEN JOHNSON: Thank you.

REP. FLEISCHMANN: With that, it's been brought to my attention that we have another student who's been waiting patiently to testify. And this is the Education Committee and students always get special preference.

So is Zeb Oko could come forward. We'll hear from him, and then he'll be followed by Rick Tanasi.

ANNE EASON: Tell them what your name is.

ZEB OKO: Hi. My name is Zeb Oko.

REP. FLEISCHMANN: Welcome.

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ZEB OKO: Thank you.

ANNE EASON: I'm Annie Eason, and I'm thrilled that my friend, Zeb, walked in here tonight to testify.

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Thank you, Zeb.

Zeb dictated some testimony and his mom wrote it up for him, and it's -- he'd like to -- I'm going to help him read it to you tonight.

I'm high school student that receives special ed classes.

ZEB OKO: I'm a high school student. I receive special ed. I have an intellectual disability.

ANNE EASON: He has an intellectual disability --

And what about the PPT meetings?

ZEB OKO: And my mom helped me in my PPT meetings.

ANNE EASON: Does she help you plan your services?

ZEB OKO: She helps me plan my services.

ANNE EASON: (Inaudible.)

ZEB OKO: They didn't do the right things all the time.

ANNE EASON: Okay. What happens when they don't do the right things, Zeb?

ZEB OKO: And I get an attorney.

ANNE EASON: Okay. Great job.

Did the attorney help you out? Tell them

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about that.

ZEB OKO: Yeah, and my attorney helped me out.

ANNE EASON: Did the school do the right thing
after you walked in with an attorney?

ZEB OKO: Yes -- no -- no.

ANNE EASON: Well, it was a long fight. Right?

ZEB OKO: It was a long fight.

REP. FLEISCHMANN: You might want a new attorney.

ANNE EASON: Okay. How do you feel, Zeb, about
shifting the burden of proof?

ZEB OKO: Make it harder for students.

ANNE EASON: Okay. What would happen if it's
harder for students to win their cases?

ZEB OKO: It'll be worse.

ANNE EASON: Do you want them to vote no for
section 3 of House Bill 5425?

ZEB OKO: Yes.

ANNE EASON: Okay, great, Zeb.

ZEB OKO: To vote no.

REP. FLEISCHMANN: That was a "yes" on voting "no."
I think I followed that one.

Have you yourself sat through a lot of
hearings as part this process?

ZEB OKO: Yes.

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REP. FLEISCHMANN: And how do you find that for yourself, is that -- is that hard, is that easy?

ZEB OKO: Hard.

REP. FLEISCHMANN: Yes. I think it's hard for most people.

Are there questions or comments from members of the Committee?

If not, I'd just would like to thank you for coming forward. It's not easy to go ahead and sit in that special chair with a little red light come on and give testimony for anybody, let alone a student who's still in high school, and we really appreciate you taking the time to work with your mom to out together your testimony and come forward so thank you very much.

ZEB OKO: You're welcome.

REP. FLEISCHMANN: Rick Tanasi is up next to be followed by Deidre Fitzgerald.

RICK TANASI: Senator Gaffey, Representative Fleischmann and Committee members, my name is Rick Tanasi. I am president of the State Vocational Federation of Teachers AFT Connecticut Local 4200A.

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SVFT represents over 1200 exceptional professionals who teach in the Connecticut technical high school system. Our members have the unique responsibility of providing students with skilled trade and rigorous academic preparation for success in today's global economy.

In his Race to the Top initiative, President

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from members of the Committee?

If not, thank you very much for your time.

RICK TANASI: Thank you.

REP. FLEISCHMANN: Deidre Fitzgerald to be followed by Donn Sottolano.

DEIDRE FITZGERALD: Good evening, Republican -- Representative Fleischmann, Senator Gaffey, and members of the Education Committee.

I'm very pleased to have the opportunity to speak tonight on behalf of an issue that I hold very dear to me, the state and practice of behavior analysis in Connecticut.

In specifically, I'm here to support section 2 of House Bill 5425 and the specific details that it brings to our attention regarding the practice of behavior analysis to the service of individuals with autism in our schools.

I come here today as a faculty member at Eastern Connecticut State University, where I coordinate an assistant level behavior analysts preparation program. It is the first behavior analysts preparation program in the State, and we're very happy to be recently joined by Saint Joseph's College with a second preparation program.

I'm also an elected experimental representative of the Connecticut Association for Behavior Analysis, where it's my responsibility to ensure access to appropriate and current experimental research in the field of behavior analysis. And I'm also a private practitioner and that role is important in that I not only train individuals to apply behavior analysis services through the

University, but I also train individuals through my role as a private practitioner, supervising people's experience in preparation for certification, as well as doing a number of other significant activities in the school system.

I want to clarify a couple of points that came up in earlier testimony. First noting what behavior analysis is, quite simply, behavior analysis is the application of the science of behavior to the solution of problems of social significance. The field of behavior analysis is grounded in the philosophical position of behaviorism, and it encompasses both the experimental analysis of behavior, as well as the discipline of applied behavior analysis.

The second of these is the one we refer to tonight in our testimony. Applied behavior analysis is the application of our experimental research to the solutions of these problems of social significance. And, in this case, that brings our attention to individuals with autism, as well as other developmental disabilities. And, like my colleagues that commented on it earlier, I do hope the language of the bill will expand beyond the scope of just individuals with autism.

Another thing that I wanted to clarify regarding earlier testimony, was how someone becomes a behavior analyst because I think even though the Education Committee has done a great job trying to summarize what is an entire field in but a couple sentences in this bill. It is complicated, and it is important to make sure that we know what we're talking about and what we're not talking about.

Behavior analysis has a rich empirical

literature and from that, we've developed our procedures and practices. Out of those procedures and practices our discipline has very scientifically and rigorously developed standards of practice that allow someone to become a certified behavior analyst.

The Behavior Analyst Certification Board certifies individuals as practicing professionals in behavior analysis at three levels: an assistant behavior analysts, full behavior analysts, and doctoral level behavior analysts.

The assistant level behavior analyst takes three courses at the semester level. That means three 45-hour courses in behavior analysis and completes 1,000 hours of supervised professional experience. In addition to that, they must complete a bachelor's degree and submit to a test.

A full behavior analyst takes five graduate level courses with specified content behavior analysis and completes 1500 hours of supervised professional experience, in addition to earning a master's degree and qualifying for an examination.

A doctoral level behavior analyst, like myself, meets all the qualifications for a full behavior analyst, and in addition to that holds a PhD in their field.

It's important to know that even though a number of the principals and procedures empirically validated by behavior analysts and supported in our literature are used by other individuals. In fact, as a parent, I use them everyday. It's important to know that that literature even though it's widely acceptable and one of the points of the field of behavior

analysis is to teach people to apply these principals and procedures in every situation that they find themselves in, it doesn't mean that our practices are not specifically our practices.

And I'd be happy to refer you to experimental literature where that research comes out of.

To summon my key points for today in support of the legislation, I want to speak to the fact that this legislation helps to ensure individuals receive behavior analysis services, according to the definitions we've just discussed, from qualified professionals. Requiring behavior analytic services to be delivered by a trained professional in behavior analysis and meeting professional standards for training and experience as established by the Behavior Analysts Certification Board is important. These rules and regulations that they have set up are grounded in empirical research, just like the procedures and practices that we're protecting with this legislation.

Acknowledging that behavior analysis has been shown to be empirically supported and a best practice in programs for individuals with autism and developmental disabilities is another important contribution of this bill.

In addition, creating individualized education plans that incorporate certified behavior analysis with verifiable credentials serves consumers at every level: our children, our educational system, the parents, and certainly our community as we reap the benefits of educating children to the best standards we can.

Thank you for your time here today, and I

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would welcome any questions that you have.

REP. FLEISCHMANN: Thank you. Thank you for that very clear exposition on what it is that you've learned and the services you offer.

Questions or comments?

If not, thank you for your time.

DEIDRE FITZGERALD: Thank you.

REP. FLEISCHMANN: Donn Sottolano to be followed by Lyn Merrill.

DONN SOTTOLANO: Good evening. Thank you, Chairperson Fleischmann, and Senator Gaffey, and distinguished members of the Education Committee.

I appreciate this opportunity to speak here for the first time in my life so it's kind of nerve-racking and exciting at the same time.

My name is Donn Sottolano. I have a PhD in school psychology. I'm a certified school psychologist in the State of Connecticut. I'm also a Board Certified Behavior Analyst. I guess around the whole world since that's what the BACB covers.

I've spent the past 22 years as the director of Behavior Services at Area Cooperative Educational Services, which most of us know as ACES. ACES is the second largest, fiscally speaking, RESC in the State of Connecticut. We service 25 school districts in New Haven County. We also provide home-based ABA services and school consultation to our districts, as well as internal special education programs.

I am here to represent myself and represent ACES, as an organization, in support of section 2 of the Raised Bill 5425, which as we know now is -- is the section which supports, you know, competencies for the supervision in the administration of applied behavior analysis for kids on the autism spectrum, when indentified, you know, in their IEPs.

I, in fact, personally believe that we should be considering this for all kids with disabilities because quite often and, you know, we have so much experiences at ACES, kids with social, emotional problems always seem to be left out of the mix when we talk about disabilities. But they -- they require and need the same competency levels of support that -- that all of our other kids do.

I've worked really hard for -- for about the past 26 years of my professional life doing two things: one is continually improving my behavior analytic skills so that I could support and help kids with disabilities and, most recently, over the past decade kids on the autism spectrum; and, secondly, I've also been fairly successful at honing the skill of avoiding public speaking, which I didn't do today, but I actually have a point in bringing that up.

I truly do avoid this stuff because it creates a great deal of anxiety and stress for me, but when this issue came up and a couple of people spoke to me about it. This issue is so -- I believe section 2 is so significant in terms of the support we can give our children with autism and other disabilities that I felt that I had to get over my angst about public speaking and come here and -- and say to you, this is a good start for us.

The one -- you know, it was really -- when I was thinking and reflecting on this over the weekend, it really -- there was a -- there's a parallel in my mind which I think is uncanny. About 23, 24 years ago, ACES which is, I think all of you know, is -- is always considered to be a program which provides excellence and innovation in education -- 24 years ago, ACES recognized that the complexity of problems that kids were presenting was going beyond their ability to effectively support those kids educationally and behaviorally.

At that time, someone from -- at -- at the time it was called the Department of Mental Retardation, recommended that they bring in a -- an expert in the field of treatment and education, Dr. Richard Foxx.

Dr. Foxx spent two weeks with ACES going from school to school, classroom to classroom. He helped teachers. He demonstrated new instructional strategies. He demonstrated ways to reduce behavior problems with kids. He talked to them about reorganizing instructional environments to be more effective for educating kids. In his closing presentation to the administrators and the executive director, who at that time was Peter Young, Dr. Foxx made a number of recommendations for the future of ACES. His lynchpin recommendation, at that time, was that ACES bring in its own expert in behavior analysis to be part of the staff.

To me, that's exactly what section 2 of 5425 is saying. That there's a recognition that people are trained in certain expertise. And I -- I, unfortunately -- I -- I strongly disagree with a previous speaker who implied something that I've experienced for over 20

years. That -- that professionals who do not have specific training tend to look at behavior analysis, behavior modification, as two simple things: point systems and rewards.

First of all, we don't give rewards to kids. We -- we -- kids earn reinforcers. There's a significant difference. And the scope of practice goes so beyond point systems, it's -- it's -- people just don't understand. It's not their fault. They're not educated for that purpose.

REP. FLEISCHMANN: If I could ask you, you seem to have overcome your fear of public speaking very well.

DONN SOTTOLANO: I've -- I've been told that.

REP. FLEISCHMANN: And, in fact --

DONN SOTTOLANO: Once I start, I can't stop.

REP. FLEISCHMANN: The buzzer that signaled that three minutes were up was about three minutes ago.

DONN SOTTOLANO: Oh, okay.

REP. FLEISCHMANN: So I'm just wondering if you could please summarize for the Comm --

DONN SOTTOLANO: Yeah.

ACES, as an organization, myself, as -- as a professional, strongly support section 2 of 5425.

And I'd be happy to answer questions anyone has.

REP. FLEISCHMANN: Thank you.

And may I say -- your -- your comments were all very well spoken.

I was just trying to make sure --

DONN SOTTOLANO: Yes.

REP. FLEISCHMANN: -- we had time for others who are waiting.

DONN SOTTOLANO: Okay.

REP. FLEISCHMANN: Are there comments or questions from members of the Committee?

DONN SOTTOLANO: Thank you very much.

REP. FLEISCHMANN: If not, thank you very much for overcoming your fears and joining us tonight.

Lyn Merrill to be followed by Beth Lambert.

LYN MERRILL: It seems a lot of us in here have overcome our fear of public -- public speaking -- very -- very well spoken people. I'm very impressed.

I am here today to speak in favor section 3d, burden of proof for Bill 5425.

My name is Dr. Adeline Merrill, and I am a member of the Ridgefield Board of Ed.

I am here to testify in support of this section, which would bring Connecticut into alignment with federal practices regarding burden of proof and due process hearings and would help districts gain control over escalating special ed costs.

As we all know, Connecticut, like all states,

is facing a growing budget deficit as a result of the current economic crisis. Furthermore, the deficit is projected to balloon to 3 billion -- that's with a B -- dollars in 2012. And this will inevitably result in further cuts to State contributions to education. A \$3 billion deficit is a wakeup call for all of us in all aspects of education. And I am here as a representative of my down -- my district and many other districts in the State and I will tell you why.

The State and the municipalities, literally, will not be able to afford to conduct business as usual. Changing the current burden of proof regulation is one way that legislators can help districts contend with escalating educational costs.

Connecticut is only -- is one of two states that does not adhere to federal practices regarding the burden of proof in special education due process hearings. The current regulation -- and it is a regulation -- for the State Department of Ed must be changed to reflect the federal legal standard of placing the burden of proof on the party challenging the placement, which is in place in 48 other states.

According to the American School Board Journal, special ed placement issues and disputes over attorneys' fees have become a dominant concern throughout the country. This issue was caused by Congress's failure to fully fund IDEA and has led to inevitable clashes between parental expectations and local district resources.

Because of Connecticut's regulation on burden of proof, our school districts face more legal obstacles and incur greater costs for spedu --

special education due process issues than districts in the other 48 states.

As a school board member, I'm here to tell you that the board of eds, throughout Connecticut, find themselves in exactly the untenable fiscal and moral position described by the American School Board General -- Journal, caught between parental expectations and the limited local resources.

Furthermore, the current burden of proof regulation in Connecticut exacerbates the problem. As many board members and superintendents have stated at meetings that I've attended in the past two years and in position statements that they have submitted in testimony to both you and to the State Board of Education, escalating costs associated with special ed due process regulations have caused districts to cut back on funding to education programs. What has struck me about these statements is that they emanate from all districts, urban, suburban, and rural.

Let me give you some specific examples of how boards of education contend with spiraling education costs which are associated with the current special ed due process regulation. In one DRG D District, which has a turbulent history of voting down budgets, the school board's regular ed program, last year, was cut 5 percent in order to cover special ed overruns. In a DRG G town, the superintendent and special ed director have tracked a continual escalation of costs associated with special ed due process hearings for the past five years. One superintendent in another town referred to the burden of proof regulation as a source of budget hemorrhaging. In a DRG B district, regular ed parents --

this is the one that scares me the most and this is what I'm here to tell you -- in a DRG B district, regular ed parents have formed a group that is now openly critical of expenditures on special ed while regular ed programs in their district are being cut and class sizes are being raised by 10 percent.

What we are going to be seeing is pitting two groups of parents against each other, and, as a board member, this troubles me. The recent action and statements of this organized parent group seem to verify the prediction made in 2008 by the Southern Fairfield County Superintendents Association. And this is the quote, "There could be a serious backlash by the parents of typical students, those not receiving special ed services, as we are forced to cut or reduce programs and services to offset the spiraling costs of special education."

In my town, Ridgefield, the special ed portion of our budget has risen 30 percent in the last three years, not including legal fees, while this year, we are asking the town for a mere 2 percent increase in the overall education budget.

Two superintendents in other DRG A towns have reported that their special ed budgets are equal to the amount of funding that it takes to run their high schools. With the current trend toward transparency in the budget process, citizens and taxpayer groups are demanding that board of ed members and town officials justify how we allocate our resources. In most cities and towns, citizens closely examine school budgets since it's the dominant source of taxation in their towns, and these budgets are posted online. Citizens are beginning to cite continuous trends in

increasing special ed costs, legal fees, and they demand to know what we, their elected officials, are going to do to control those costs.

The fact that similar complaints about the burden of proof regulation are made by school district officials throughout the state, regardless of their DRG group, makes it clear that there is a systemic problem which has to be addressed.

Fortunately, section 3 would do just that. As stated in section 3, the hearing officer shall review the evidence presented in the hearing with the burden of proof --

REP. FLEISCHMANN: Ma'am --

LYN MERRILL: -- on the party requesting the hearing.

REP. FLEISCHMANN: Ma'am, I think your point is very clear. If you could sum up at this point.

LYN MERRILL: Uh-huh. Okay.

In conclusion, I applaud the legislators for proposing the change to Connecticut's burden of proof regulation.

I'm usually an optimistic person, but I believe if legislators don't follow through with this change to the burden of proof regulation and other systemic changes, we will be just rearranging the deck chairs on the financial Titanic that is heading our way in 2011.

Thank you and I look forward to working with legislators and other officials to address our

State's budget crisis.

REP. FLEISCHMANN: Thank you for your time and your testimony.

Are there questions from members of the Committee?

Representative Lyddy.

REP. LYDDY: Just one quick question.

Thank you for being here.

You said that your -- particular in Ridgefield -- your special ed costs have risen 30 percent? That's not including legal fees.

LYN MERRILL: Correct.

REP. FLEISCHMANN: What -- why? What is the reason for that?

LYN MERRILL: What is the reason for that -- the -- as you've heard a lot of the testimony, increasing numbers of children with -- with children with autism spectrum disorders. Also we have an increasingly large number of students who are medically fragile who require a lot of other services including nurs -- nursing services -- sometimes one-on-one aid. So we're seeing a larger increase of students with special needs starting at age three.

REP. LYDDY: Thank you.

I think you just proved my point. There, obviously, is an increase of need, and I think what this -- what you're proposing or what you're supporting here would almost support the opposite which would, in turn, reduce the availability of services for those people who

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do need it.

Thank you, Mr. Chair.

LYN MERRILL: I don't quite understand his logic
but --

REP. FLEISCHMANN: Thank you, Representative Lyddy.

Other comments or questions?

Chairman Gaffey.

SENATOR GAFFEY: Were you here earlier when Senator
Fonfara asked questions to the Superintendent
of Darien?

LYN MERRILL: Yes.

SENATOR GAFFEY: Okay.

And how would you answer the question that
Senator Fonfara posed, that for an average
person -- an average parent walking into the
room with the school district personnel
sitting there -- it does seem rather
intimidating to many and that perhaps this
levels the pay -- playing field for the
parents walking into that process. How would
you answer the Senator's question?

LYN MERRILL: Well, it's interesting that in the
other 48 states, it -- it works.

But it's interesting, as I'm listening to
testimony from superintendents and board of ed
members, it's actually the feeling of many of
them that the current system is biased against
the districts to the point that many of them
simply settle. They don't go through the
process and that's where the escalating costs
are coming in is they just -- they don't go

there.

So actually I heard a lot of the testimony. I'm trying to be objective. I'm a board of ed member, but I'm hearing from the others that also the due process hearing, itself, needs to be looked at. There's nobody monitoring the hearing officers and some of the rulings. So that there is a reluctance on the part of a lot of districts to even enter into the system because the rulings have been so skewed against them so I would actually argue the other way.

SENATOR GAFFEY: Why -- why would you think that the districts, quote/unquote, always settle?

LYN MERRILL: I'm sorry. What?

SENATOR GAFFEY: You just said that the districts always settle.

LYN MERRILL: No. They often settle.

SENATOR GAFFEY: Okay.

Why do you think they "often" settle?

LYN MERRILL: Because they don't believe that they will win the -- the system. The way --

SENATOR GAFFEY: Do -- do you --

LYN MERRILL: The way it is structured -- that there are no guarantees. For example that -- who is -- who is the advocate, what is their qualification, who is the hearing officer? They're suspect of that process so they don't want to enter into that. You'll incur greater legal fees.

SENATOR GAFFEY: Oh, you'll incur greater legal

fees. But the -- the question -- because this is a -- this is a fact-based evidence procedure where if the documentation is done properly and the facts are presented, each side has equal chance of prevailing. So, I mean, I could understand that districts settle and I think this is -- this is the case, typically, they settle

LYN MERRILL: Yes.

SENATOR GAFFEY: -- because they've made a calculated decision that, you know, they don't want to risk the economics just in case they don't win. However, that doesn't mean that they are settling because they believe they won't win. So I mean -- I mean --

LYN MERRILL: Well, it's --

SENATOR GAFFEY: You look at a P -- I've been through a PPT process. And it's -- it's a document fact-based process, what's in the file, and what's -- what's been done according to law. And I -- I mean -- I just -- I'm having a hard time -- having -- you know, feeling sorry for the districts because they somehow are in a bad position here.

Typically, they're in the best position regardless of where the presumption of the burden is.

LYN MERRILL: Well, I think that's what's interesting. If you listen to the districts throughout the state, if they're saying the same thing, then you have to listen to that. And just an objective listen, you hear it from whether it's a DRG A or DRG F town. It's the same thing. And you have to ask yourself -- the other 48 states operate another way. Why are we different?

SENATOR GAFFEY: Well, we do a lot of things different than --

LYN MERRILL: I know.

SENATOR GAFFEY: -- the other 48 states. We do them for very good reasons. Clean Air Act is one of the best reasons in Connecticut that we're -- we're different than other states except for California.

LYN MERRILL: But as -- and I remind you -- as I remind you, the fiscal crisis that we are facing is going to result in your cutting support to the districts.

SENATOR GAFFEY: Yeah. I assure you --

LYN MERRILL: And you know that. And I'm telling you.

SENATOR GAFFEY: -- we're very cognizant of that.

LYN MERRILL: And we are telling you that this is a con -- an area in our budget that we have no control over. And it's growing, and it will continue to grow.

SENATOR GAFFEY: That's the whole underpinning of why we're hearing this bill.

LYN MERRILL: Exactly.

SENATOR GAFFEY: Because we wanted to hear testimony on that.

LYN MERRILL: And I appreciate that.

SENATOR GAFFEY: I just, you know -- so do you believe there's some middle ground out there in this process that could be achieved so that

we have parity to both parties if, in fact, as you're presenting that you believe that the districts are behind the eight-ball in this process?

LYN MERRILL: Is there a middle ground?

SENATOR GAFFEY: That was the question.

LYN MERRILL: I would have to think about that.

SENATOR GAFFEY: Okay. That's fair enough.

LYN MERRILL: I will get back to you on that.

And I will submit this testimony. I have not had a chance to do that but I will do that.

But I will think about that.

SENATOR GAFFEY: Thank you.

LYN MERRILL: Some improvements to the system are needed, definitely.

SENATOR GAFFEY: Thank you.

REP. FLEISCHMANN: Neither comments or questions from members of the Committee?

If not, thank you for your time and testimony.

I believe we're to Beth Lambert, to be followed by Kristen Nielsen.

BETH LAMBERT: Senator Gaffey, Representative Fleischmann, other members of the Committee.

My name is Beth Lambert. I'm the president of Connecticut Families for Effective Autism Treatment. We're a parent-volunteer organization that helps other parent

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throughout Connecticut find the resources to find effective autism treatment for their children.

And I'm here to speak in favor of section 2 of House Bill 5425 and against section 3 of House Bill 5425.

The reason that I'm in favor of section 2 is that not only does ABA work for our children, but the reason it works is that there are qualified people delivering the behavior analysis.

We hear from parents who say my child is not making progress in an ABA program. And then when you talk to the parent, they tell you, well, no, it's not a certified behavior analyst; it's not anybody that really has training; they went to a two-week course.

So we're very pleased at the idea that we will certify the people here in Connecticut that will deliver behavior analysis to our children.

There is research that shows that qualified personnel makes a difference in the outcome of the quality of life in children that receive ABA services.

I also need to talk very strongly against section 3 of this bill.

Earlier today, one of the superintendents from Darien spoke about how there's provisions in the IDEA law that protects parents' rights. Just those four letters would mean nothing to many parents. I-D-E-A? What is that? They don't know what the law is; they don't know what their rights are. They go into a PPT process blind, trusting the education

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professionals in front of them. And to -- when they finally figure out that their child isn't making progress and something needs to be changed, they don't have the access to the professionals that the educational staff does.

And as people have said the cost is phenomenal. You know, she was talking about the cost to school systems. The cost to parents is unbelievable, and they cannot handle it as a family. You'll see marriages fall apart. You see families fall apart going through this process.

So it's very important that we support section 2 in this bill and that you vote against section 3.

Thank you for your time.

REP. FLEISCHMANN: Thank you for your time and your testimony.

Questions from members of the Committee? If not, thank you.

Kristen Nielsen, to be followed by William Wenck.

KRISTEN NIELSEN: Good evening.

My name is Kristen Nielsen, and I currently coach and develop new teachers, right here in the city of Hartford.

I'm here tonight to testify on behalf of House Bill 5421.

But first, thank you to Senator Gaffey, Representative Fleischmann and members of the Education Committee for allowing me to testify today.

I entered the field of education through Teach for America, serving two years as a prekindergarten teacher in the District of Columbia while also earning a master's degree in early childhood education. I initially entered Teach for America with a plan to teach for two years and then go to medical school. However, my experiences while teaching fundamentally changed me, and I will now commit my life to the field of education and, in particular, to closing the achievement gap between our poorest and wealthiest communities.

After finishing my two-year commitment with Teach for America, I chose to return to my home state of Connecticut because I feel very strongly that our state, more than any other, can be the model of excellence in education for all children and that I have a personal obligation to the community that provided me with such exceptional educational opportunities as a child.

For the past two years, I have worked as a teacher coach, a position in which I manage, support and develop 35 first- and second-year teachers each year so that they can achieve significant academic results with their students.

My experiences as a coach have taught me the importance not only of skilled teachers but of excellent administrators. I now know that an effective administrator is an inextricable aspect of student achievement and that though our state is privileged to have many such people, we need many more.

It is my goal to be one of these people. I want to use my skills in managing, coaching

and developing teachers, along with my firsthand knowledge of what excellent teaching for all children looks like, as a school leader.

This past fall, I began searching for pathways to school leadership offered in Connecticut, with the hope of entering a program this year. Current legislation requires me to teach for a total of 50 months and attend a state approved program for school leadership, all of which are currently run by universities and take several years to complete. Simply put, were I to pursue school leadership in Connecticut, under the current framework, it would take at least five to six years for me to complete the necessary requirements, as well as a considerable amount of money for program tuition.

This is longer than it takes to earn a law degree or even to complete medical school and has deterred me from pursuing school leadership in Connecticut at this time.

Many of our neighboring states have opened the door to nontraditional and accelerated pathways to school leadership, such as New Leaders for New Schools and state-run alternative routes to certification. These programs attract highly motivated and successful individuals who bring with them a breadth of experience in management and education. I know because many of these individuals were my peers in Teach for America and they are now leading highly effective schools in the District of Columbia, New Orleans and New York City.

I feel that without an alternate route to school leadership in Connecticut, we are losing many of our strongest future school

administrators to states with these programs in place. Since no such pathway currently exists in Connecticut, I am now considering programs in neighboring states that would recognize my leadership, exceptional results as a classroom teacher, and skill as a manager of teachers, as attributes that qualify me to be a school administrator. I am thrilled at the possibility of alternate routes to school leadership in Connecticut and would surely be one of the first in line to apply for such a program if it existed.

I urge you to consider the impact that this legislation will have in our ability to attract highly successful and motivated individuals, like myself, to pursue school leadership in Connecticut. This will help us as a state to continue improving our educators, our schools, and, ultimately, the caliber of educational opportunities we provide to our children.

Thank you.

And I'll take any questions.

REP. FLEISCHMANN: Thank you, Kristen.

It's good to see you again.

KRISTEN NIELSEN: Good to see you.

REP. FLEISCHMANN: It's good to hear that you're interested in being a school leader. And I'll just say, from my vantage point, one of the reasons I'm so committed to developing this alternate route to certification for school leaders is so that people, like you, who are so dedicated to the education, are able to get to the places you want to go.

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KRISTEN NIELSEN: Thank you.

REP. FLEISCHMANN: In a way that -- that isn't some kind of massive deterrent.

So I appreciate your testimony.

KRISTEN NIELSEN: Thank you.

REP. FLEISCHMANN: And your commitment.

Are there comments, questions from members of the Committee?

If not, thank you for your good work.

It's been brought to the Committee's attention that we have some teachers in the audience who will be administering tests to Connecticut students tomorrow morning, early. And some of them will have to travel quite a ways tonight to get back to their school systems.

So, in the same way we try and show some deference to students who come here, we try and do the same for teachers. So I'm actually going to call them up as a panel and ask them to just take seats, and we'll have testimony from all four in a row.

It's Susan Loud, Ed DeSousa, Joe Sylvestre and Eric Sawyer.

Come on down.

Susan, you seem to be in the middle spot with the mike on so why don't you start and then we'll go left and to the other two folks and sum up.

Thank you.

If not, thank you for your testimony.

ALLISON PETIT: Thank you.

REP. FLEISCHMANN: We have some more folks who have tests in the morning, teachers. So I'm going to bring up Meaghan Donato and Jessica Milano. Do you want to come testify together?

We want to make sure you're awake as you're administering CMTs to your students.

Hopefully, they're not staying up late to watch you on television tonight.

A VOICE: Hopefully.

MEAGHAN DOMATO: Good evening.

My name Meaghan Domato, and I'm a speech language pathologist in a Connecticut public school. And I'm here to provide testimony in support of House Bill 5425, section 2.

I'm currently enrolled in coursework online to become a board certified behavior analyst. The courses are accessible, affordable and of high quality. In combination with my supervision from a BCBA and this coursework, I have already been able to apply strategies to my daily speech and language therapy sessions.

It is critical to note that my training as a speech language pathologist did not prepare me to implement, design or suggest behavior intervention plans as designated by a planning and placement team. To ensure the highest level of efficacy that the children of the state of Connecticut deserve, it is imperative that a BCBA create and execute behavioral strategies.

Thank you.

JESSICA BROWN: I'm here to testify in support of HB 5425, section 2.

My name is Jessica Mi -- previously Milano, now Brown, and I'm a special education teacher in a public school for children with aut -- autism spectrum disorders. I've been working with a board certified behavior analyst for the past year and my -- their expertise has made remarkable progress within my classroom as far as classroom management and student acquisition.

I've collaborated with another outside agency, previously, whose consultant was not a certified behavior analyst and the results were not similar.

I'm -- provi -- excuse me -- providing effective intervention assumes that this autism spectrum order -- disorder can be a daunting task. There are more and more students coming in who have IAPs mandated to have ABA therapy within their services.

I'm currently completing online coursework to become a BCBA and being supervised by a BCBA.

Most teachers and paraprofessionals get little to no training with it at all to service these students. It is essential that school districts utilize qualified and certified professionals to deliver ABA services so that teachers, support staff, and students can work in a successful and positive classroom atmosphere.

REP. FLEISCHMANN: Thank you.

Are there comments or questions from members

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districts would want to take their approach to do this too. It's going to save them a lot of money. It's going to save them the problems of having to go -- and go to due process because of -- of kids who are now eighth-graders and can't read.

REP. GIULIANO: Thank you, Dr. Wenck.

Thank you, Mr. Chairman.

REP. FLEISCHMANN: There comments or questions?

If not, we go to Christina Ghio, to be followed by Heidi O'Brien.

CHRISTINA GHIO: Good evening, Senator Gaffey, Representative Fleischmann, and members of the Committee.

Thank you for the opportunity to testify tonight in opposition to section 3 of House Bill 5425.

My name is Christina Ghio. I am an attorney with a private practice dedicated to representing the interests of children. Prior to establishing my practice, I was an assistant child advocate at the Office of the Child Advocate, and prior to that, director of the Child Abuse Project at the Center for Children's Advocacy.

For over a decade, I've represented children with special education needs in special education, child welfare and juvenile justice matters.

You have my written testimony. I'm not going to go through that, but I just want to touch on a couple of points and address some of the points that have been made here tonight.

First, it's important to understand why parents are usually the requesting party. There are very, very few circumstances under which the school is going to be the requesting party: if the parent refuses an initial evaluation, if the parent refuses a reevaluation or if the parent requests an independent evaluation and the school does not wish to provide that.

Other than that, here's how it works. Your child has a cognitive limitation, maybe some behavioral challenges along side of that and the school, let's say, put in place a one-to-one. That's working well. Everything's going well. The school decides that it's no longer necessary to have the one-to-one. They propose to remove the one-to-one. As a parent, you either accept that the one-to-one will no longer be provided for your child, or you request a hearing. If you don't request a hearing, what the school is proposing, happens.

And so that's why parents are the requesting party, and that's why people are talking tonight in terms of shifting the burden. And, as you know, the regulation that's -- that's currently in place clearly places the burden on the school to prove that what they've proposed or what they've refused to do is, in fact, consistent with the law.

The other issue that I'd like to touch on is the issue of cost savings. There's been a lot of discussion tonight about the cost of these services and the cost of due process.

First, I think it's important to address the suggestion that there's a bias against school districts at the -- at the due process level.

The last statistics I saw were that, in a large majority of the cases, 60 percent for those who -- for people who are represented, in 60 percent of those cases, the school districts are the prevailing party in the due process proceedings here in Connecticut. For pro se parents, those who do not have counsel, the school districts are prevailing in 90 percent of the cases.

SENATOR GAFFEY: What's your reference to that statistic?

CHRISTINA GHIO: I don't have the number in front of me. They were numbers --

SENATOR GAFFEY: Can you please provide the reference to that stat?

CHRISTINE GHIO: -- that were provided. Yes.

SENATOR GAFFEY: That'd be important for us.

CHRISTINA GHIO: Absolutely. I can send something over in writing --

SENATOR GAFFEY: Thank you.

CHRISTINA GHIO: -- with the source of that.

In addition, you know, there was a comment that this had been a business decision. I've one quick point, and I will make it quickly.

There's a dec -- a business decision sometimes to settle the case rather than pay for the cost of litigation. If the burden of proof is flipped, the -- the business decision also gets flipped. And so the decision will be made to litigate rather than provide services. The only potential saving here is if parents are so discouraged by the imbalance that they

just don't even bother to try, or if there's a hearing and the child is denied services that that child would be receiving under our current regulations.

Thank you very much for the opportunity to testify.

I'd be happy to answer any questions.

REP. FLEISCHMANN: Are there other questions or comments from members of the Committee?

SENATOR GAFFEY: Yeah. I have one.

Just what I asked the board of ed member from Ridgefield previously.

You're an attorney. You practice this law. Is there any middle ground here. I mean, we're dealing with boards of education that are crying out for mandate review. We're dealing with mayors and first selectmen that come here pound down our doors and say, You guys keep passing laws to make things more stringent which has a concomitant effect to our bottom line and the only place that we can go to raise money is property taxpayers. We've got a huge property tax burden in many of our municipalities out there right now.

And they point to this law and other laws where we're more stringent than other states across the United States of America, and there's a significant cost to that.

I'm with you on the argument as far as the parents. Having gone through it, I understand it. But what would your suggestion be -- would be to meet the concern of the municipal officials and the board of ed members that come to us urging some sort of mandate relief

here?

CHRISTINA GHIO: You know what? I would say this. The -- I can't give you a proposal that I think would more appropriate than what's currently in place, the regulation that places the burden on the school districts.

What I would say is that the rising costs, in my view, are not a result of the burden of proof. They are the result of a variety of other factors and changing this burden of proof might deprive some students of services and, therefore, save some money.

But I don't think it's going to solve the fiscal crisis facing school districts or the State at this point. And to be honest with you, I don't know what would.

But I -- but I don't know of a middle ground as you -- as you use the term that could be applied in these proceedings. I think there is -- there are many, many, many opportunities for resolution. And, by and large, most cases resolve along the way before they get to due process. The last number I heard was last year, only seven cases actually proceeded through a hearing to adjudication. So it's very, very, very few cases that actually proceed to hearing.

SENATOR GAFFEY: Yeah, that doesn't surprise me at all, not at all. I think most districts will settle rather than incur the cost of the outside legal counsel that most all of them utilize in these types of proceedings. And they're extremely expensive.

CHRISTINA GHIO: And likewise for the parent, the incentive to settle is very high. The -- the -- you know, the parents --

SENATOR GAFFEY: Yeah. I agree with you. I agree with you.

CHRISTINA GHIO: (Inaudible.)

SENATOR GAFFEY: Thank you for that.

And if you'll just provide us with the reference. You can email our clerk -- clerk, Chris Calabrese with that.

CHRISTINA GHIO: Will do.

SENATOR GAFFEY: And Senator Fonfara wanted to ask a question.

SENATOR FONFARA: Thank you, Mr. Chairman.

I don't know if you stated this earlier in your testimony but of the percentage of hearings -- hearings, what percentage do parents bring an attorney with them versus pro se?

CHRISTINA GHIO: I don't know the number. I believe that there is some data that's been compiled but I -- we probably -- I could get an answer to that for you. There're quite a number that are pro se, but I don't know the percentage breakdown. I think if -- if that's part of the data --

SENATOR FONFARA: If you could submit that with --

CHRISTINA GHIO: I could submit that with the other information as well.

SENATOR FONFARA: Please, thank you.

Thank you, Mr. Chair.

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SENATOR GAFFEY: Would you -- would you make any suggestions with regard to the -- the process that's followed -- the board of ed member from Ridgefield suggested that there should be some procedural changes to this -- to this entire process. Are you in favor of any changes? Want to think about it?

CHRISTINA GHIO: I mean, I can think about it and it seems to me that -- right now, there is a process that, by and large, is weighed out by federal law. For the most part, the State follows, you know -- it mimics the federal law. And so I think, you know, we have a process in place. In large part, it works to resolve matters rather than to have hearings. There is mediation. Most -- most parents want to take advantage of that and do. And -- it's a small number of cases that actually proceed through hearing.

Thank you.

REP. FLEISCHMANN: Other comments or questions?

If not, thank you.

CHRISTINA GHIO: Thank you.

REP. FLEISCHMANN: Heidi O'Brien, to be followed by Edna Novak.

HEIDI O'BRIEN: Good evening, Representative Fleischmann, Senator Gaffey, and members of the Education Committee.

HB5423

My name's Heidi O'Brien, and I work for the Humane Society of the United States, in particular, our student outreach program which is located in East Haddam.

And I'm here, today, to give testimony in

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tonight.

And I think we will, most likely, reject this idea to have this cut. It's not good policy after all the forward progress we've made with healthy food legislation the past couple years, so.

MADELINE DIKER: Well, we are -- we are a leader, you know, for the nation. The federal government has, or at least their organizations that have looked at Connecticut standards as we go through reauthorization in -- in the federal government. It's -- it's a wonderful program. It takes time. You can't expect changes quickly. But we've been doing it now for a few years and now we're seeing the results of -- of what we're trying to do.

Thank you.

SENATOR GAFFEY: Thank you so much.

Any questions?

Thank you.

MADELINE DIKER: Thank you.

SENATOR GAFFEY: Shannon Knell? Knoll? Is Shannon here?

Chris Lent? Chris.

Good evening.

CHRISTOPHER LENT: Good evening.

Chairman Gaffey, members of the Education Committee, my name is Christopher Lent. I'm a parent from the town of Columbia.

HB5425

And I'm here to testify in strong opposition to Section 3 of a House Bill 5425, which places the burden on the party moving.

Although a complaining party typically bears the burden of proof, the Individuals with Disabilities Education Improvement Act is atypical from other civil rights and social welfare legislation in that an affirmative, beneficiary-specific obligation is placed on the providers of public education. For example, Child Find requires schools to proactively identify, locate and evaluate children with disabilities who are homeschooled, homeless, wards of the State. To alter settled Connecticut law would not only be unfair and place an onerous burden on families by placing a thumb on the scale in favor of school districts. This would -- likely would result in unintended consequences.

According to the Connecticut State Department of Education, 215 special education hearings were scheduled during 2008 to 2009. And in anticipating your question, this data which I am about to discuss has been submitted to the -- to your staff members, as well, including the raw data. Of the 215 cases last year, 186 were filed by parents. That's 86 and a half of the cases. Only 29 were filed by school districts; 143 of these cases were settled which is 66 percent of the time; 58 of the cases were withdrawn or dismissed without being fully judi -- adjudicated. Only 14 cases were fully adjudicated during the 2008/2009 school year. Of that, 10 cases, the school district was the prevailing party, leaving only four. So by no means have parents have had the upper hand as far as this burden of proof.

By shifting the burden of proof on the party requesting the hearing -- and as my stats show is more than 86 percent of the time -- school districts would have less incentive to settle, which as I've shown is roughly 67 percent of the time. If more disputes require full resolution before a hearing officer, it's likely this could be a higher burden on the State. For example, special education hearings are on an accelerated timeline so additional hearing officers may be necessary, in fact, to ensure due process within the time constraint time line.

School districts are in a far better position to demonstrate that they've demonstrated -- or they've fulfilled their statutory obligations. Current law already places the burden of production on the party requesting the hearing so to shift the burden of proof, as well, onto the party moving -- which like I've said is most of time the parent -- is certainly unfair.

As the data reveals, school districts have prevailed in more than twice the number of hearings that were fully adjudicated.

And, as was mentioned earlier about the safeguards that are certainly in place to protect the parents, I'd like to remind that safeguards are also in place to protect the school districts as well. There is a fee-shifting provision so in the case of frivolous lawsuits where the parents bring a claim, certainly fee -- the fees can shift to the school district as well. So certainly schools are protected in a certain means.

I, respectfully, request the members of the Education Committee to reconsider the efficacy of altering settled state law when the

statistics that I've put forth fail to suggest any inequities in the special education procedural rules which would require legislative redress.

Thank you.

SENATOR GAFFEY: Well, thank you very much, Mr. Lent, for your testimony, in particular, how you disaggregated this data with regard to the disposition of these cases. This is a very instructive testimony, and I thank you for taking the time to do it.

CHRISTOPHER LENT: You're very welcome.

SENATOR GAFFEY: Any questions from members of the Committee?

Thank you very much, sir.

I appreciate you staying around to testify tonight.

CHRISTOPHER LENT: My pleasure. Thank you.

SENATOR GAFFEY: Christina Calabro?

Good evening.

CHRISTINA CALABRO: Good evening.

My name is Christina Calabro, resident of Ridgefield, Connecticut, and a mother of two children with special needs.

Today, I am testifying, asking you to please support section 2 of 5425.

Autism has twice affected my family, and we learned the hard way that we didn't see the results my child was capable of achieving

until their program changed and became under the direction of a BCBA. My oldest child, Christian, is the perfect case study that your return on investment can be huge, quality of life changing when an appropriate program is put in place under the supervision of a qualified professional.

My son lost his diagnosis, which was a direct result of his hard work under an ABA program started by CCCC, then carried over in our home district under IPP. As a result, he will have better quality of life and his education program will cost the taxpayers a whole lot less.

My daughter, Samantha, will turn six next Friday. She was diagnosed with autistic disorder at 22 months. Sam likes to skip and jump and dance to music. She also has self-injurious behaviors.

This bill would ensure that our children will receive behavioral analysis from qualified professionals. Anything less is a disservice, not only to my daughter, but to her kindergarten classmates -- who love having her in the class -- her teachers, her therapist, the school nurse, the bus drivers and the taxpayers in her community.

I have seen, firsthand, how a behavior program that was supervised by an unqualified professional failed. We lost precious time, time we will never get back. Hiring employees who are not qualified to provide these services also puts school districts at risk of lawsuits.

Please support section 2 of HB 5425.

Today, I am also asking you to please oppose

section 3, of HB 5425.

The State of Connecticut has this correct now. Please do not support placing the burden of proof with the party who asks for the hearing, which in almost all cases is the parent, parents like myself.

As education advocates, we parents fight for our children to have and maintain an appropriate program. When this -- when this does not happen, we are left with no other choice but to file for due process. We would fail, as parents, if we didn't do whatever is in our -- in our power for our children to have what is due to them. By changing the shift of burden, you make it that much more difficult for us to do our jobs.

Thank you for your time.

SENATOR GAFFEY: Christina, thank you for your time and thank you for waiting around to testify this evening. I appreciate it.

I think that the section 2 part of the bill has a very good chance of passing this year.

CHRISTINA CALABRO: I hope so.

SENATOR GAFFEY: I wouldn't say the same thing about section 3.

But I thank you for being here.

Any questions for Christina?

Thank you very much.

CHRISTINA CALABRO: Thank you.

SENATOR GAFFEY: Jenn McCormick.

JENNIFER MCCORMICK: Good evening.

SENATOR GAFFEY: Good evening.

JENNIFER MCCORMICK: My name is Jennifer McCormick, and I'm here in support of House Bill 5425 section 2.

I am dually certified as both a regular education elementary school teacher and a board certified behavior analyst.

My training to become a teacher was vastly different from my training to become a behavior analyst, very different, yet ultimately complimentary. I am a better teacher because I have been trained as a behavior analyst and a better behavior analyst because of my experiences as a teacher.

Today, my job is to collaborate with special education teachers to utilize my skills as a behavior analyst in conjunction with their skills as a special educator. If I had not been trained to be a behavior analyst my teaching training alone would not be completely -- would be completely insufficient for me to be able to design and supervise a comprehensive ABA program for any child with special needs.

Currently, I consult within public schools directly to teachers who service children with disabilities in a number of school districts throughout Connecticut. Some of the teachers I consult to conduct mainstream classrooms and the rest run a self-contained classroom. Regardless of the population of students in the room, the goal is always that every child is learning.

It is imperative that the professionals working with our special education students have the specific credentials of either a BCBA or BCABA. People providing ABA services without the expertise that these credentials hold put every child with disability at risk for not getting the education and future that they deserve. Not only does it jeopardize the children's futures but not having qualified professionals with these credentials puts school systems in a place to be targeted for parental lawsuits.

Section 2 will not only clarify the credentials for helping to service children with autism but it will help to ensure that these students have the best possible education and future provided to them.

Thank you.

SENATOR GAFFEY: Thank you very much for your testimony.

Any questions?

Thank you very much.

Ralph Gerard? Harold Martone? Elizabeth Uly?

Good evening.

ELIZABETH NULTY: Hi.

Hello. My name is Elizabeth Nulty, and I am the secretary for the Connecticut Association of Behavior Analysis.

HB5425

I had a whole nice testimony prepared for you guys, however, all of my colleagues have really made the point over and over again that

behavior analysts in the State of Connecticut are in support of House Bill 5425, section 2, and so is the Connecticut Association of Behavior Analysts.

There were -- including 10 to 12 members that were here to testify today.

I just wanted to give you guys a couple of facts that -- that haven't been presented -- just about our statistics here in Connecticut.

Someone had mentioned before that we have 185 board certified behavior analysts here in Connecticut currently: 75 percent of those are board certified behavior analysts at either the masters or the doctoral level; the other 25 percent of -- of the board certified analysts hold the associate level behavior analysis which is a bachelor's degree in addition to the five courses that someone else had mentioned prior to that.

And the only other thing that I -- I think hasn't been mentioned is with regard to the continuing education of board certified behavior analysts that once -- once you are board certified, your education doesn't stop there. Every three years you have to be recertified. And that is a requirement that -- that you have to get 36 hours of cont -- continuing education in addition to your -- your university courses. So every three years, 36 hours. So I wanted to make -- make that mention as well.

And -- and like I said, everybody else has done an excellent job giving my testimony for me. So --

SENATOR GAFFEY: It was a very well organized effort.

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ELIZABETH NULTY: Yes, it was.

SENATOR GAFFEY: And thank you very much for --

ELIZABETH NULTY: Thank you.

SENATOR GAFFEY: -- your testimony. You did add a couple facts that we hadn't heard before tonight so thank you very much.

ELIZABETH NULTY: Thank you.

SENATOR GAFFEY: Any questions?

Thank you.

ELIZABETH NULTY: Thank you.

SENATOR GAFFEY: Is Deborah or Doberah Holstrum Barkley here? Dave Scata?

Dave.

DAVE SCATA: Thank you.

SENATOR GAFFEY: You're welcome.

DAVE SCATA: I'd also like to bring to the table Brian Farrell. Brian and I --

SENATOR GAFFEY: Sure.

DAVE SCATA: -- represent ConnCASE. I am the past president of ConnCASE, which is the Connecticut Association of Special Ed Administrators, and Brian Farrell is the present -- present president of ConnCase.

HB5425

And I have testified before this Committee many times. And thank you for having me again this late in the evening. We'll try and be

brief. I am not going to read from my testimony tonight.

Actually, I'm going to bring up one point that hasn't been brought up tonight which is something in language in section -- it's House Bill 5425, AN ACT CONCERNING SPECIAL EDUCATION, section 4, Item Number h.

There's language in this bill that is being proposed that is very confusing to me. It talks about the transfer of financial responsibility from one district to another district if the child leaves the district after October 1st and goes to another district that the financial responsibility would be from the preceding district to the district that the child resides in or moves to for the rest of that fiscal year or for the rest of that school calendar year.

It's really -- the intent of the language is unclear to me, and I really do have kind of a lot of questions associated with that because I'm not quite sure where the language came from, or really what was the intent of that language in this specific item. And it raises really more questions than it does answers.

You know, and, again, it goes back to what district personnel would be responsible for ensuring the fidelity of the student's IAP, the previous school from where the child came from or the present school, the receiving school? I believe that is part of the bill. I don't think that I am mistaken unless that was taken out in the past day or so.

The other issue that really is regarding to that is will the receiving school have the same level of commitment or ownership knowing that the previous school is both physically

and educationally responsible? So the language in that section really does raise a lot more questions to me. And I believe that, if I'm not mistaken, that is part of the bill that I was reviewing prior to this evening. Am I correct? Okay.

So I'm really asking a lot of questions from the Committee is what was the intent of the language and how would the language even be monitored? And we were trying to find those -- some answers prior to coming to this evening and really could not. So there's really a lot of questions that I have associated with transferring the financial responsibility from one school district to the next school district when a child leaves that district. And also the issue of residency really would really come into play in that. So we're really looking for some clarification of the intent of the language.

SENATOR GAFFEY: Well, obviously, there's -- there's problems with the language. There's no question about it. We caught that when we reviewed the bill. I can't remember exactly who the representative was that requested the language but certainly there -- there are a lot of problems with this.

DAVE SCATA: Uh-huh.

SENATOR GAFFEY: So we've -- it's on our radar screen and, you know, in all likelihood, the language would not go forward.

DAVE SCATA: Okay. And I appreciate that.

Unfortunately, we're running out of time here but I'd like to have a couple more minutes.

SENATOR GAFFEY: That's okay. Yes.

DAVE SCATA: It is late and I appreciate that..

I'm not going to read from my testimony in support of section 3.

There's been a lot close discussion tonight. I know that we're -- if I could talk openly and honestly, I would appreciate that opportunity to do so.

SENATOR GAFFEY: Uh-huh. We'd expect you to. Go right ahead.

DAVE SCATA: I don't feel like we're the bad guy in this. The public schools are kind of out to get parents. We really support educational programs and you know, we went into the field because we believe in that. In looking at the burden of proof, there's some issues associated with that that I feel really need to be put on the table and now some of those issue and key points were brought on the table tonight.

It really is an issue of the due process and looking at the whole concept that we have in Connecticut and trying to make some changes into that. That there are other ways of looking at that. I know a couple of years ago, ConnCASE actually was trying to introduce some of that from Wisconsin, and we had brought in actually some speakers to start looking at changing the whole concept of due process and how to mediate that. So I do believe when you asked the question, Is there some middle ground? I think that really is worth investigating.

I think there is a way of looking at it that would be equitable to all parties involved because, really, our major purpose is to

educate children. And it's really that relationship building that you make with parents in building that equitable solutions to problems that are associated with -- when parents have a concern.

Whether burden of proof resides with the family, whether burden of proof continues to reside with the school district, you know, we can tend to look at the fact that we are only one of two states in the 48 states that have burden of proof which resides with the school and how can we defend our programs. And one of the issues that we feel is associated with that is really the litigation costs that come into play with that.

One of the things that really hasn't been studied, and there is true -- there is a lot of settlements that occur prior to going through due process. And I think what districts weigh -- and it may not always be a decision of that their programs were iniquit -- inadequate but whether or not a costly due process hearing is something in the best interest of the school district or -- or whether it would be easier to make some settlement agreement that would be less costly to the district. And then I'm not sure that's always the case to say, as I said previously, that the school was at fault in those decision makings. But sometimes it's a weighted decision because of the economics that we play all the time.

If I can have an opportunity, I'd like Mr. Farrell to address some of that issues are, are there's a more of a equitable way or is there middle ground that we could start to look at and maybe even look at a study to say can we look at due process in the state of Connecticut in a different way.

BRIAN FARRELL: Thank you very much. Again, I support section 3 of 5425

SENATOR GAFFEY: Please identify yourself.

BRIAN FARRELL: I'm sorry.

Brian Farrell, president of ConnCASE, and I'm the director of Special Services for Redding, Connecticut in Fairfield County.

I -- I submitted testimony so I won't even address that.

I would simply like to offer the resources of ConnCASE in any meetings or discussions about trying to find a middle ground because, as Mr. Scata said, I think this is very worthwhile. It's not something that I think we can fix overnight. I -- I do support the language, but if there's something that can be more equitable to the parent community and the educators, I think it is worth pursuing, worth pursuing vigorously.

So I -- I will make myself available to any discussions or the resources of ConnCASE.

SENATOR GAFFEY: Thank you very much, and I appreciate the offer.

Isn't -- isn't it the typical case -- what I often hear is that the -- the parent and advocate will typically want a private placement for the services as opposed to what the -- what is provided by the school or what's provided by the RESC?

I'm familiar with ACES, mostly because it's in my area, and ACES has an outstanding, in my view, special ed services, and I think -- I

think it may be a case from time to time -- I mean, parents are going to fight for what they think is best for their child, all the time. But I think there may be a misperception out there as to -- just because it's a public -- publically provided service that it's not as good as the privately provided service. I think that's somewhat of the problem that tends to be the issue that increases the cost to the district outside of the cost of the processing and, certainly, litigation even meeting the settlement.

The meter runs pretty heavy when you're -- when you're meeting the settlement just as it does if you're going through the whole process of litigation. But maybe that's where the middle ground, somehow, can be reached. I don't know. But I'm interested in your -- your suggestions on where that middle ground might be found.

BRIAN FARRELL: Okay. I don't have any suggestions, at the moment. You are correct and quite often and even before due process is filed, there'll be a resolution of some kind. We call it the "cost to win." If the cost to settle is less than the cost to win that all comes into -- into account and those cases are not reflected quite often in the statistics presented.

I think the statistic is very telling that so many cases are settled. Usually, they're settled for some financial consideration and that is the cost that -- that we're addressing.

But, again, I'd be more than happy to enter any discussion as to what direction we might be able to go.

DAVE SCATA: We, actually, recently, had a meeting with Commissioner McQuillan, some superintendents and myself represented some special education issues and this was one of the items that was brought to the Commissioner's attention, looking at the whole concept of due process and trying to -- excuse me -- establish some process with the State Department of Education and looking at the concept, looking at how hearing officers are trained, looking at the concept of mediation and whether other states are doing that may have a better process in resolving difficulties, in resolving disputes than we feel that we have in Connecticut. So it is something that we feel also taken up with the Commissioner, as well.

BRIAN FARRELL: Some states have a multitier level of hearing officers. They would have a hearing officer, and then a secondary panel that would, if asked to, review the decision of the first hearing officer. So there are many different methods of resolving -- someone spoke earlier that we're following the federal government's model. I think 50 states interpret that federal government model differently, and this is the way Connecticut has done it. But I think it -- it's worth a second look.

SENATOR GAFFEY: Okay.

DAVE SCATA: Really the conc -- in our -- our process of what we're -- hope to accomplish and we try to do that in many different ways is to resolve any disputes at the lowest level possible, you know, before it gets into the area of litigation or gets into the area of due process because, as we know as well as you know and parents know, that -- once that process starts, the whole idea of

relationships really goes down the tubes. And that's one of the key indicators is building that relationship and that trust between the family and the school, and once litigation happens, that does not exist anymore.

SENATOR GAFFEY: Thank you very much, gentlemen, for your testimony.

DAVE SCATA: And thank you for your time.

SENATOR GAFFEY: Thank you.

Timothy Connellan? Timothy here? No?

Joseph Cirasuolo.

Good evening.

JOSEPH CIRASUOLO: Good evening, Senator -- Senator Gaffey, members of the Committee.

I'm Joe Cirasuolo. I'm the executive director of the Connecticut Association of Public School Superintendents.

And I'd like to, very briefly, give you the perspective of superintendents of schools, assistant superintendents, central office people on three bills that are before you. And I'll be quite brief.

The first is HB 5421, the ACT CONCERNING EDUCATORS AND ADMINISTRATORS. We are in favor of an alternate route to certification for superintendents and for other school administrators, if for no other reason than if enacted and put in place, it would give boards of education more options when it comes to hiring superintendents and superintendents more options when it comes to hiring administrators.

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several Connecticut school districts to explore whether and how we might be able to assist them in designing a training pathway for prospective school leaders.

In closing, I urge you to pass this bill as an important step forward in Connecticut's policy framework. It will add opportunities for continued innovation in partnership in the training and development of outstanding school leaders for school districts that need them the most.

Thank you very much,
and I'd be happy to take any questions.

SENATOR GAFFEY: Thank you, Michael.

Any questions for Michael?

Thank you very much for your testimony. I appreciate it.

MICHAEL THOMAS: Thank you.

SENATOR GAFFEY: Michelle Laubin?

Good evening.

MICHELLE LAUBIN: Good evening.

Good evening, Senator Gaffey, members of the Committee.

My name is Michelle Laubin. I'm an attorney with the law firm of Berchem, Moses & Devlin. We represent school districts. And I've doing that for well over a dozen years.

On behalf of the Connecticut Council of School Attorneys, I would like to speak briefly in favor of Raised Bill 5425, section 3, which

would amend Connecticut's General Statutes section 10-76h(d)(1) to place the burden of proof on the party requesting the hearing in a special education dispute.

I did not submit my testimony in advance, but it has been -- copies have been provided to the Committee, and I would invite you to review it in -- in full.

I'm going to skip some of it in the interest of time, and I appreciate everyone's patience this evening and staying here so late.

It has been pointed out already, according to extensive research conducted by the Connecticut Association of Boards of Education, or CABE, Connecticut is one of only two states in the nation that have not adopted the IDEA preference for placing the burden of proof on the moving party. Following the United States Supreme Court decision in Schaffer versus Weast in 2005, 48 other states either had that rule prior to the Supreme Court decision or adopted that rule following the Supreme Court's decision.

We have not heard reports coming out of those other states that parents are at any significant disadvantage following the adoption of that rule.

Casting a vote in favor of this provision does not cast a vote against children with disabilities or parents of children with disabilities. This is about the proper allocation of the burden of proof in American jurisprudence. As noted by the United States Supreme Court, in the absence of some compelling reason, the burden of proof is placed on the party who brings the action to prove his or her case.

Each of the reasons advanced by the parent's advocacy community most notably that the information is in the hands of the school district and, therefore, it is only fair that the school district hold the burden of the proof has been rejected by the United States Supreme Court.

This argument was rejected because parents have the right to obtain copies of all documentation associated with their child's educational program. And they have the right to an independent educational evaluation at public expense by an independent expert, that expert, if he or she renders an opinion in favor of the position of the parent, can be called by the parent as a witness in any subsequent due process hearing. And if the parent prevails in the hearing, payment for the witness's expert testimony is a compensable cost paid by the school district as part of the prevailing party's attorneys fees and costs.

In our experience, there is no shortage of evaluators ready, willing, and able to provide this service to parents and children with disabilities in this state.

Casting a vote in favor of this provision is a vote in favor of public education and in favor of Connecticut's school districts. The current system imposing the burden of proof on the school district in every case leads to longer due process hearings.

And if I could just continue for a moment, this answers some of the questions that were raised, I think earlier in the process.

Knowing that it has the burden of proof, the

school district must almost always trot out the full panoply of witness to defend every aspect of a child's individualized education program or IEP often in response to a broad allegation that the child's program does not offer a free appropriate public education.

There are often between five and ten people in each case involved in providing services to the child. And the school district must present testimony from each witness subject to cross-examination by parent counsel in each case.

Full due process hearings that include testimony from parents, parent experts, and school district witnesses often take up ten to 12 days of hearings over the course of many months. Some hearings have exceeded 20 days and lasted well over a year.

While these hearings are going on, districts, administrators, and staff are diverted from the business of educating, not only the student at issue in the hearing, but many other students as well. This has an impact on the quality of educational programming provided to other children with and without disabilities.

The Supreme Court in the Shaffer versus Weast opinion expressed dismay that in the information presented to them, the cost of due process hearings were between 8,000 and 12,000 dollars. We estimate, here, in Connecticut, the average cost of a due process hearing at many times that number. The district legal fees alone are often in the range of 20 to 30,000 dollars. The parents' legal fees are usually more in the range of 50 to 75,000 dollars.

Most districts can little afford the significant resources needed to adequately defend these cases both in terms of attorney's fees and staff time, resources and attention. While the allocation of the burden of proof is certainly not the only factor in this result, it is a significant contributing factor.

Diverting resources into the hearing process necessarily diverts those resources away from improving instruction, paying teachers, providing professional development, training teachers in newer and more effective methods of instruction, and improving outcomes for all students.

In these challenging economic times, most school districts in this state would have to make a choice between hiring another teacher or saving a teacher's job and setting aside money in the budget to defend a due process hearing, especially factoring in the high cost of potentially having to pay the parents' attorney should the family prevail in the hearing.

The monumental cost associated with special education litigation have another certainly unintended consequence in this state. Settlements of special education disputes increasingly shift education funding dollars away from public education to private schools, where parents who are able to commit significant resources to private school education are able to unilaterally place children and then sue the school district for the reimbursement of those costs.

Even if the school district believes that it has provided good services to the child at issue, the district often chooses the less expensive path of settlement rather than the

expensive and resource-consuming path of litigation. The dollars for these settlements come out of each town's education budget and go directly to funding expensive private schools, many of which are not approved by the State for the purpose of providing special education programming.

If the district agrees to make the placement advocated by the parents through the IEP, part of the cost is passed back to the State to fund through the excess cost reimbursement grant.

If the Committee is looking for a concrete step to take in the direction of limiting or reducing the excess cost reimbursement budget, this is one step that will take -- that will help to realign the hearing process and bring cost under control.

Shifting the burden of proof to the school district in every case in Connecticut has had another, perhaps, unintended consequence that was noted by the Supreme Court in its decision.

It intensifies what it already an adversarial process, making it the presumption and the prevailing attitude that the teachers are not providing adequate services; that their expertise is suspect and subject to challenge by experts outside the school system.

One hearing officer's decision some years ago, reflected this back to the parties by stating that the district who had submitted the testimony of its teaching staff, presented no experts, while the parents had presented expert testimony.

The world of special education is increasingly an emotional battlefield, where every person

on the field believes he or she represents the position that's in the best interest of the children. Shifting the burden of proof away from the party bringing the hearing request to the school district in every case only intensifies the adversarial nature of this process by immediately putting the teachers in a defensive posture.

This is not where you want teachers to be when you want them to put forth their best efforts on behalf of children. As pointed out by the Supreme Court this runs counter to the presumption in the IDEA itself that our teachers are experts who develop programs for children with disabilities in cooperation with parents and who should have our confidence.

The Committee can recognize the expertise and the important contributions made by Connecticut's public school teachers and related services staff by passing this change to the statute and -- which would return the burden of proof issue to its proper balance. This would be a vote in favor of public education.

Thank you, and I would be happy to take any questions.

SENATOR GAFFEY: Thank you. Just a -- did you say that you passed your testimony in?

MICHELLE LAUBIN: I think that Kay did pass the testimony in. I don't know.

SENATOR GAFFEY: Okay. Because we're -- we don't have it up here so we'll have to locate that testimony?

MICHELLE LAUBIN: I think the plan was we were going to email it after tonight's (inaudible).

SENATOR GAFFEY: Okay. You can email to Chris Calabrese, our committee clerk.

You made a lot points in your testimony that would leave one to presume that the Supreme Court in Schaffer, pierces the -- the veil of the Connecticut law, so to speak, but this -- this statute has never been challenged, as far as I know, in the court.

MICHELLE LAUBIN: Connecticut's regulation has not yet been challenged.

SENATOR GAFFEY: Right.

MICHELLE LAUBIN: That is correct.

SENATOR GAFFEY: So we have no -- we have no history on that whatsoever. I mean, is it your -- is it your contention because of the points that you mentioned in your testimony that our statute would somehow be found to be in violation of the Constitution?

MICHELLE LAUBIN: We certainly considered making that argument and the opportunity hasn't presented itself in a concrete case yet, but I think the simplest way of solving the problem would certainly be, as one member of the committee pointed out earlier, to simply change the State regulation because that's the source of the shifting of the burden of proof now.

I think there are a number of reasons for why that hasn't happened up until this point, and, each time, to my knowledge, that the arguments have been raised, the suggestion has been that this is really a legislative issue and that the Legislature should simply take up the issue and confirm that the burden of proof is

with the moving party where it should be.

SENATOR GAFFEY: Except that you, in your testimony, pointed to many legal issues whereby the statute might have a problem surviving judicial review, and that's not a legislative issue that's a -- that's a legal -- I'm not trying to kick the can down the road, but I find it interesting that the statute's never been challenged.

MICHELLE LAUBIN: Uh-huh.

SENATOR GAFFEY: Senator Fonfara.

SENATOR FONFARA: Thank you, Mr. Chairman.

You're clearly an expert in this area, and I am quick to point out that I am not, but the testimony today, I -- in yours in particular, you paint very effectively a picture in which, teachers are almost under attack in terms of the resources that come in -- because of the current regulation in Connecticut, in terms of the burden. But I think it was Madison that wrote about the tyranny of the majority, and I look at this, the other way. Where you have parents who have -- have to defend a situation or have to argue for a situation behalf of their child against what they must perceive as an overwhelming force from the superintendent on down to the special ed teacher to the classroom teacher.

What if I were in that situation, even as a legislator, I would be overwhelmed by that. I would -- I would be so intimidated by that process, and I can only imagine for the people who may not be experienced in -- in fighting for a cause, whether it's your child or some other issue that we all here do every day. That's my reservation. Putting the money

factor aside, which we can't, but when you get down to the odds, I am not sympathetic to the points you are making.

I'd like you to respond to this, this is not just a -- you know, a statement on my part that that parent or parents having to go against the unified front when a school or a administrator and the staff decide this is the position we're going to take with respect to this child, and we're standing by it. That's an overwhelming -- overwhelming odds for them, for that mother, for that father, on both.

MICHELLE LAUBIN: I think -- I've never met a teacher who wanted to be in a position of intimidating or overwhelming the parent of a special needs student. What I -- I speak to groups fairly frequently on this issue and including groups of --

SENATOR FONFARA: Could I just say rather -- maybe not intimidating or overwhelming, but where you are left feeling as if, pardon the expression, or that you're crazy. That, you know, that somehow what you're asking for on behalf of your child is -- you don't know this; we are the experts; we understand what's best for your child; and then to have the burden shift where I have to prove this, what I believe is the law already and what services you should be providing for my child? That's the scenario that I'm contemplating here and much like being in a court of law, or as I said a minute ago, you know, the majority versus the minority. That's the great leveler that we generally support in this country. I don't know about the rest of the country in terms of this issue but Connecticut, I think that's -- the leveler is, okay, if I have to go up against this unified front, and not suggesting that that position is necessarily

wrong, but at least if it -- the leveling effect is from having the burden be -- if you're going to take this position, it should be on you not on me.

MICHELLE LAUBIN: And I think it is significant if I could, Senator, that there are 50 states and 48 of them have chosen the path of putting the burden of proof on the moving party. So clearly 48 States have examined this issue and said, we've weighed all of those things and, yet, we still believe that it is fair to put the burden of proof on the moving party.

We have in this state, I think, a very good network of parent advocacy groups and parent attorneys, and I think, in part, the disconnect between what I'm saying and the perception -- and it's not -- I'm not saying that it's not a real perception it is. Reality for many parents is sort of a tale of two Connecticuts in some ways. And what I am trying to communicate is that the -- there is a significant cost, and I think it is an unintended consequence of the law and they we, in Connecticut, have interpreted it that is allowing millions of dollars every year to be funneled away from public education and into private education. And I'm suggesting that one step, and I know this is not the only thing results in this, and my colleagues from ConnCASE and elsewhere made excellent points earlier about there needing to be much more dialogue about how we handle special education hearings in this state, in general. But one thing that could be done would be to replace the burden of proof, I would say, to the moving party, which in some cases is the school district.

It was pointed out earlier that the school district has the burden of proof in evaluation

cases when they decide to deny a parent an independent evaluation, which is that sort of basic -- one of the basic procedural safeguards that does and, in the estimation of the United State Supreme Courts, levels the playing field because the parent can walk into that IEP meeting and say to the district, I disagree with the evaluation that you've done; The basis for this IEP is faulty; I disagree with this evaluation, and I want an independent educational evaluation at public expense.

And in that situation, the school district can only reply one of two ways: One is, yes, absolutely, here's our criteria for independent evaluators, Here are some suggestions -- but they can't dictate who the parents go to to obtain the evaluation; or, no, we believe our evaluation is appropriate and we will go to due process to defend it. And in that case the school district would have the burden of proof.

The school district would also have the burden of proof in a case where the school district is recommending a private school or out-of-district educational placement for a child and the parent is opposed to that change in placement. The school district under our state law has to request a due process hearing if they believe that they cannot provide a free appropriate public education, and they have to ask a hearing officer to order that change in placement. There are disciplinary hearings, where the school district would have to go a hearing officer to ask for a child placement to be changed, and they would have the burden of proof when they do that, as they should.

As has been pointed out by my colleagues, when

the school district requests a hearing, they absolutely should expect to have the burden of proof, but in personal injury cases, in millions of other types of litigation all across the country, where plaintiffs are equally, if not more disadvantaged in terms of their access to the information, the burden of proof is placed on the moving party.

And the consequence of not doing that, I think is evident in the way you've heard tonight, school districts feel about the process. They feel disadvantaged by the process. And in driving up the costs of the hearings, the hearings are more lengthy. They go on for months, if not years at a time. They distract teachers and administrators from doing other things that are of benefit, both, to children with disabilities and children without disabilities. So I think that there is validity to putting the burden of proof on the moving party.

SENATOR FONFARA: I probably could go on with this, Mr. Chairman, but given the hour, I will not.

SENATOR GAFFEY: Thank you very much.

SENATOR FONFARA: What I would like, Mr. Chairman, is if -- if you could respond to the Chairman's question earlier of how, if it all, this issue could be bifurcated.

As you were speaking, I was envisioning a number my Latino constituents, whose first language in some cases -- first language is not English, and in some cases, it's not English at all, ever being able to, pardon the expression, compete in that environment.

It's tough enough for them now, if the burden shifts to them, how could they ever stand a

chance when again the wall of unanimity on the part of the administration says, We know what's best for your child. And you know what, I want to believe that 80, 90 percent of the time, they're right, but on those situations where they're not, given the -- I think the Chairman has made an excellent point regarding the cost on the high end of this, and you've articulated it even further. I think I actually agree with that, but, on the basic level, when we're not talking about someone who's seeking to, you know, have the school system pay for something that they don't want to or whatever the issues are that you've articulated here and others, talking about basic rights of just trying get the school system to do something in the classroom for their child that they don't believe is -- it may have been asked for in the IPP but not now the teacher doesn't want to do it, something simple of that nature, where if it goes to a hearing and, again, I'm swimming in a deep end here --

MICHELLE LAUBIN: I'm -- I'm trying -- I think understand the question so that I can answer it --

SENATOR FONFARA: You don't have to answer it today. I think if you can put something in writing regarding it. There's a way to split the baby, if you will, that would be helpful.

MICHELLE LAUBIN: I'm -- I'm not sure that there -- there is -- on the -- on the burden of proof issue, I think it's sort of, you know, it is or it isn't. Although, I would -- I would point out an earlier speaker did make reference to needing to prove their case beyond a shadow of a doubt. And I think it's worth pointing out that the burden of proof is a preponderance of the evidence in these

cases. It's not beyond a reasonable doubt.

SENATOR FONFARA: Thank you.

Thank you, Mr. Chairman.

SENATOR GAFFEY: Thank you, Senator.

Anything further?

Thank you very much for your testimony. I look forward to receiving it.

Next Mary Jo McLaughlin, Mary Jo here?

Tom Zwicker?

THOMAS ZWICKER: Good evening, Senator Gaffey and distinguished members of the Education Committee.

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I'm here on behalf of my son, wearing my bright orange tie tonight. It's his favorite color. And he's four years old, and he has autism.

And, you know, when I first brought him to the school in Hamden for preschool. You know, they were very excited. They had a great ABA room they said. They said they had all the right people, right program in place to make sure that, you know, he made good progress.

And, you know -- you know, my experience with ABA, obviously, is, you know, thousand of studies, you know, personal experience as well. You know, I was all behind it. I was very excited. I didn't know they had a Hamden program, you know, that any autism, you know, working with ABA folks, so.

You know, but what he got, and I think this is

where the disconnect happens with school districts and parents, is that you know what he got was what they knew how to provide. You know, they did the best they could. I'm not saying that -- there should be an adversarial relationship. They did what they felt was appropriate and what they knew had to do. The problem was when I starting delving into, Well, what kind of training do have? Do have a behavior analyst on staff?

They said, Well we've -- we've got a behavior analyst who comes in from Southern Connecticut for a few hours a week. Yeah, you know, we've taken some classes and we've had some professional development.

So, you know they -- they wow'd you know my son's mother with some cute little anecdotes about some neat things he did, putting his backpack away for the first time all by himself, you know, going in a room by himself without someone standing next to him so he wouldn't run off.

And, you know, that's really, you know, critical in terms of, like, how they communicate with parents. They're not using data. They're using like these cute little anecdotes, which, of course, parents love to hear and take up half of a PPT meeting.

And, you know, why was I so frustrated, well, I was happy to hear the anecdotes, but that's pretty much all I heard. No data and no -- no real progress, as far as I could see, on his biggest two deficits, where he didn't speak a word. And he had never eaten solid food and still wasn't making any progress. They had him like chewing on chewy tubes as his feeding program. I mean that -- that just like totally inappropriate.

And, you know, I've got a doctorate in applied behavior analysis and when I started, you know, asking a lot of questions and looking at what they did provide, it just didn't meet that requirement for what "good" looks like. And I even offered to fly in experts from all over the country, you know, from wherever they wanted to find them and show them what good looks like -- or fly them out to see one of these locations.

You know, I was in an executive and leadership coach for Fortune 50 companies. I had a lot of means in order to make that happen so I offered. You know, they never took it up and they took offense at it as well. And, you know, not that I was trying to be mean, but I want the best for my son, and if they're giving me a Chevy on blocks, I want one that runs.

And, you know, so I paid for BCBA out-of-pocket from ACES and, you know, I -- I -- one of my good friends works for ACES. So I convinced him to sell out one of his colleagues, got her to come to my son's house in the evenings and on the weekends and work with him and work with his nanny. And, you know, in just two weeks, she got him eating food and starting to speak words. And he hadn't done that in a year and a half of working with Birth to 3 with all the folks and all the speech pathologists they had put against that.

So, in two weeks, he made more progress in almost two years of effort. And I went on and on with the school about how much progress he seemed to be making at home, and I good data on and compared it to what they were providing at school. And I said, Listen, he makes more

progress in ten hours at home then he makes the entire week in school.

You know, so where are we going next? You know, I'm thinking my next step is a lawsuit and, boom, you know, all of a sudden they're listening.

And, finally, they said, Well, what do you want? And, you know, speaking of private service providers, they actually offered one up. I suggested ACES because I knew them. I knew the EIBI program. And I said, you know, if you can provide services in his school and my new boss, Don Sottolano -- who overcame his fear of speaking -- you know, articulated very nicely that, you know, they're willing to go into these schools and provide services in the school and that's exactly what IPP did for my son.

Now he has 30 hours of ABA programming, and he's actually on a trajectory now for recovery. So, you know, that's a burden that the State won't have to bear when my son turns 21 and he needs services for the rest of his life.

And, you know, I -- I hope read my testimony that, you know, during this whole time, I was trying to convince his mother to move to either become a researcher at Stanford or UCLA, instead of Yale, because, hey, they have great services out there, and it's covered by insurance as well.

So, you know, how many people leave this state rather than even fight the school district over this? I don't think that's a number you're -- you're going to get, but I'm sure it happens because in KU, where I went to grad school, we had parents flock to the school

program that we created right next door in Lawrence, Kansas, right next to the University. Parents came from all over the country because they were fed up and they couldn't fight the system. So they came to Lawrence because, hey, it's part of the school program here, and we'll move there if we have to.

So, you know, that's something I think that's important to consider. I don't think the schools, you know, are intentionally not providing services. I think the incidence rate of autism went up. They're scrambling to find a good solution. They've got people who aren't trained. And, you know, I don't think it should have to take a PhD in behavioral analysis for other kids in Connecticut to get the same level of services my son gets now.

I want them all to have that, and that's why I, basically, I stopped traveling and started working for ACES. So, now, I hope -- I hope, you know, everybody else gets the same level of service and, you know, has the same rate of progress that my son has. You know, and that's why I'm here tonight because, you know, I want to make sure that, you know, section 2 goes through.

And I really do have a personal issue and also I don't really see how, you know, going up against the school and all its experts is going to be, you know, viable for most parents who, you know, just don't have the wherewithal or the understanding. I mean my son's mother is a researcher at Yale, and she thought they were doing a great job.

So I really question whether or not your average person or even your expert person who's not an expert in this field, would know

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the difference between a Chevy on blocks and a Cadillac. So that's my concern really and you know on behalf of my son, I hope, you know, that you pass the -- the Section 2 and really reject Section 3. So thank you.

SENATOR GAFFEY: Thank you for staying tonight to offer your testimony to us. And I hope your son sees that tie.

TOM ZWICKER: I hope so. Oh, he should be in bed by now.

SENATOR GAFFEY: They (inaudible) -- but, no, I really appreciate your passion, your commitment and thank you for sharing it --

Any questions from members of the Committee?

Thank you very much, appreciate it.

TOM ZWICKER: Thank you.

SENATOR GAFFEY: Michelle Roberts.

Julie Swanson.

Michelle's not here no more?

A VOICE: (Inaudible.)

SENATOR GAFFEY: Okay. Hi.

JULIE SWANSON: (Inaudible) and against section 3. I'm just going to read the first quick part on section 2: Twelve years ago, I filed, I believed what was the very second ABA due process in the entire state of Connecticut that fought for ABA services for my child who's now 15 years old.

Part of the problem way back then was that the

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school did not have a board certified behavior analyst as an integral part of my son's education team, which, of course, way back then how could they have. Nobody would have expected the tide that has come in since then. I was fortunate enough to prevail on that case, and I went on to become a special education advocate in private practice and help other parents secure appropriate services for their children with autism spectrum disorders throughout the entire state of Connecticut. I've been doing that for the last 13 years.

All these years later, nearly every family who retains me, does so because one of the integral aspects of their child's program is not appropriate. and that is that behavior analysis is not being conducted by qualified professionals. As an advocate, this issue is at the heart of almost every case in which I am involved.

I believe we must insist that qualified professionals deliver these services in school just as we insist that certified and qualified professionals deliver speech and language services, occupational and physical therapy services, psychological services, social services and academic instruction. It's also my strong belief that if we don't hold these same expectations or that we treat the delivery of these services inequitably, that in fact, we're discriminating against children who require this level of expertise.

Now, onto my -- against section 3, regarding the shifting the burden of proof, as a special education advocate, I will move heaven and earth for the parents I work with where I say I would-- we want to resolve this issue at my level. I'm the-- I'm the step below an

attorney. My goal is to resolve issues at my level, and I will tell you that parents do not want to go to due process nor do they want to file due process for frivolous matters. and so I don't think I need to say it any differently than anyone else here has done tonight. But I would urge you to vote against the shifting of the burden of proof.

I'd be glad to ask any -- answer any questions.

SENATOR GAFFEY: Thank you very much for your testimony.

Representative Lesser.

REP. LESSER: Thank you, Mr. Chairman.

And thank you for your endurance tonight.

Just one quick question, what percentage -- can you give me some information about what percentage of your clients do you think would be able to afford legal representation if -- in a due process hearing, if that were required?

JULIE SWANSON: Well, not that I have anecdotal data on this, and that is that, first of all, half of the people I speak to can't even afford to hire me. So once somebody does retain me, I always talk to the parents I work with about the option of going to due process and how I will try to avoid that at all costs. I would say, maybe, maybe 2 to 3 percent of the people, the folks I work with would even be able to go on to due process. And even if they would, if they could afford it, it's not something that they want to do.

You're really -- at that point, you're being

forced into it, in my opinion, in most cases. That's a generalized statement, but it's not something you go into lightly.

REP. LESSER: Thank you very much.

SENATOR GAFFEY: Further questions?

Thank you very much --

JULIE SWANSON: Thank you.

SENATOR GAFFEY: -- for your endurance tonight.

JULIE SWANSON: Thank you.

SENATOR GAFFEY: Okay. Michael Lamberg?

Linda Rammler?

Good evening.

LINDA RAMMLER: Good evening, Senator Gaffey, and other members of the Committee who have many -- incredible endurance.

I'm here to testify about Raised Bill Number 5425, like many other people. I have a PhD in developmental psychology, aka kids, a master's degree in special education, the status is an approved resource of school districts by our state Department of Education. and membership in a number of professional organizations, including the Association for Positive Behavior Support. I've taught graduate courses in positive behavior supports and I have conducted and successfully implemented hundreds of behaviors support -- hundreds of behavior assessments and resulting in behavior support intervention plans, as well as assisted IEP teams in developing appropriate IEP for hundreds of students with autism.

I am not a BACBA certified practitioner for a reason. My main issue is that I am too old to have been certified by the BACB during my professional training and I was too busy to pay attention when I could have been -- when I could have had my certification grandfathered. I'm not going to take courses now at the twilight of my career because I can assure you that I grew up with behaviorism, read most of the thousands of studies done in, and stay on top of current research, use/apply behavior analytic principles in my work of over 35 years and have learned from and even worked with some of the greats in the field, like Ted Carr, Todd Risley, Gary LaVigna, Rob Horner, Connecticut's own George Sugai and even Brian Iwata and Ivar Lovaas, before many others heard of them.

The accumulation of behavioral knowledge has been phenomenal but it is an understanding of that accumulation, not immersion in a narrow selection of studies that makes applied behavior analysis work for individuals. When the only tool you have is a hammer, everything looks like a nail. Behavioral theory, like the basic principles of electrical wiring is elegant and simple, in theory. In practice, what many BACBA certified practitioners do -- and I'm not referring to some of the excellent professionals who testified before you today -- is akin to an electricians who've only been trained how to hammer circuit breaker box to basement studs without any understanding of how an entire house needs to be wired in conjunction with its overall structure, plumbing, design, and other considerations.

To many board certified behavior analysts ignore the input of other credential disciplines, such as teachers and therapists,

when it is clear -- and required by law, that a trans disciplinary approach works best for educating students with disabilities, including autism. There are other evidenced-based practices, like peer-mediated instruction, video modeling and peer-social role modeling with its roots in lower case applied behavior analysis not just a discrete trial instruction that most people are concerned about that are ignored by too many BACBA certified practitioners. Other disciplines, such as nutritionists and sensory integration training -- trained therapists also have evidence-based practices that must be monitored for effectiveness and incorporated into individual programs. Yes, an eclectic approach that is individualized always works best as the IDEIA requires.

The current language of this raised bill despite the disclaimer that ABA is not mandated implies otherwise.

I should have mentioned I'm from Middlefield, Senator Gaffey.

My other concerns are that I have seen too many instances where board certified behavior analysts have misanalyzed or oversimplified complex causes of challenging behavior, applied rigid techniques without understanding how the individualized these when the single-subject research design in this field has demonstrated that to be necessary and created problem behaviors resulting in the application of (inaudible) restraint, seclusion, time out, et cetera.

I could tell you stories that would break your heart.

What's most concerning is a BACBA is not the

only group that has developed standards of practice for applied behavior analysis. The Association for Positive Behavior supports this comprehensive standards of practice, too, but chose not to pursue the certification route to avoid the conflict of interest developers saw as inherent in any group that is self-monitoring, self-policing, and self-credentialing.

A number of the greats, who have 30 to 40 years of experience and developed the field itself, are not BACBA certified. They comply now with APBS standards. Are we statutorily to deny a Connecticut child the benefit of those individuals training and expertise because they lack BACBA certification? This is the only case in special education or any other services where the policing organization is empowered to determine who is in and who is out and to be allowed without oversight to create some requirements to obtain a recent -- retain certification at whim.

All other disciplines require an intensive program of study in a licensed -- or accredited university or other institution of higher learning, and then when their programs of study are completed, they seek licensure or certification through their professional association which is recognized by the State or by the State, itself.

I'm very concerned that if we only leave it up to the BACBA to make the credentialing requirements certified for individuals who practice applied behavior analysis that we're going to be creating poor public policy and that it's not the solution for protecting against poor practice and it opens the door for something that, quite frankly, terrifies me.

I also have some comments about -- in opposition to section 3, and I believe that there is some considerations in section 4h of the raised bill that I'll be happy to give you in written testimony. But if anyone has any questions, I'd be happy to answer those.

SENATOR GAFFEY: Thank you, Linda. I did know you were from Middlefield. It's good to see you.

LINDA RAMMLER: It's good to see you, too.

SENATOR GAFFEY: The first thing I was going to ask you, do we have a copy of your testimony?

LINDA RAMMLER: I'm going to send it to you.

SENATOR GAFFEY: Okay.

LINDA RAMMLER: I found out about this and worked all day and then got here in --

SENATOR GAFFEY: Well, I'd appreciate --

LINDA RAMMLER: -- It's written so you'll -- you'll all get it and I'll file it officially.

SENATOR GAFFEY: Terrific.

LINDA RAMMLER: So it'll be on the network.

SENATOR GAFFEY: That's great.

Anybody have any questions for Linda?

Yes, Representative Lesser, also representing Middlefield.

LINDA RAMMLER: What a surprise.

REP. LESSER: Thank you, Senator Gaffey, for you

indulgence. I know the hour is late.

I just had a quick question on -- on your testimony, Linda. You stated that you believe that the -- that even though it states explicitly in section 2c that the bill does not endorse ABA-only therapy, that you think the bill implies that it does? I wonder if you could comment just briefly on -- on why you think that's the case.

LINDA RAMMLER: I feel that it would be better to have more open-ended language in this statute that speaks to -- for example, behavior analysts as well as other professionals and the need for all of them to be credentialed appropriately.

For example, there are people who are going around recommending GSCF diets for people, which are gluten and casein free diets for individuals with autism, who do not have a appropriate nutritional nutritionist credentialing, and so on. I -- I think it's got to be up front and center that this is not an endorsed approach, and I think just be mentioning it by name, given the controversy in the field, when there's other approaches, I mentioned some that have their roots in lower case applied behavior analysis, and we're talking over 35 years of research here.

And a whole -- whole body of studies, as well as other disciplines and by not mentioning those, by default, it looks like, aha, this is what the legislature's saying and they have to be certified in this manner.

REP. LESSER: Thank you.

SENATOR GAFFEY: Thank you, Representative Lesser.

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Linda, thank you very much for taking the
time --

LINDA RAMMLER: Thank you.

SENATOR GAFFEY: -- appreciate it.

Jennifer Lavino.

Good evening, Jennifer.

JENNIFER LAVIANO: Good evening.

SENATOR GAFFEY: I apologize they have you as down
number 46 here --

JENNIFER LAVIANO: That's okay.

SENATOR GAFFEY: -- and then moved to somewhere
else..

JENNIFER LAVIANO: I switched with somebody earlier
who had childcare issues --

SENATOR GAFFEY: Okay.

JENNIFER LAVIANO: -- and had I -- hindsight's
20/20. Let's just get underway.

SENATOR GAFFEY: Thank you for staying.

JENNIFER LAVIANO: My name is Jennifer Laviano. I
am a special education attorney in private
practice in Sherman, and I have overcome my
fear to keep my mouth shut for more than five
minutes at a time for the last seven and a
half hours.

So I feel quite proud of myself.

I would like to respond to a number of
comments that Michelle made -- and I'm sorry

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she's not here, and I'd be comfortable with the Committee sending her a transcript of what I have to say and asking for her response.

Her testimony would --

A VOICE: (Inaudible.)

JENNIFER LAVIANO: Right, right. That's true.

I think her testimony would have -- have been quite compelling had it been an accurate statement of the law. And I'm quite concerned about a number of things that were said. Number one, Connecticut's regulation has been brought to a judicial review. The case is Mr. and Mrs. M on behalf of -- behalf of AM versus Wilton. It was my case. It was her firm that defended it so I'm disappointed that she doesn't remember it. It wasn't her individually who was representing the district in that case.

SENATOR GAFFEY: It depends who prevailed, who remembers its.

JENNIFER LAVIANO: Yes. That's true, that's true.

At any rate, it was since the Shaffer case. Shaffer does not say in any way that a state cannot allocate the burden of proof. It says exactly the opposite. The IDEA is silent on this, which is why it went all the way up to the Supreme Court, who said absent state law to the contrary, we're not finding that it should always be on either the board or the parent. It's really up to the states.

Connecticut, yes, is in the minority, but we're also in the minority in a lot of other ways and in some very good ways. I think it's something of which we should be rather proud.

I also would note, and this gets to your question about -- about middle ground. We do have a creature in Connecticut, and I do think we're one of only two states that has it, called an advisory opinion process. The advisory opinion is like a speed round due process hearing. It's not on the record. It's not binding. But it allows both the parent and the district to hear from a hearing officer in half a day whether or not their case has merit. It's a useful process in many cases. I've used it many times. We could fix some of that in a way that I think might be useful. And I would agree that there is some common ground with parents and districts as to whether or not the hearing officers could be better trained, as an example.

A lot of money is spent because many practitioners on both sides feel that the hearing officers don't understand a lot about special education so you have to trot out the witnesses.

I also think it's important to note, Michelle made a comment to the effect that expert witness fees are compensable if the parent prevails. That's not true. The Supreme Court has -- has squarely said that that's not true in a case by the name of Murphy. And so even if a parent has the means to hire a me, and has the means to hire experts to challenge the school district, if they win, they may be able to get some of their attorney's fee reimbursed, but they cannot get those expert fees reimbursed, and that can run in the thousands of dollars, which makes going forward in a hearing, obviously, a disadvantage.

I can't state enough, we have 70,000 students in Connecticut who have IEPs. We had seven --

now according to the State when I asked them this week, seven decisions last year in 2009. Seven out of 70,000 and this is just much ado about nothing, in my view. I really don't think that children who are -- medically fragile, children with -- autism spectrum disorders, their programs are not going to become inexpensive if we change the burden of proof in special education due process hearings for those seven cases.

Special education is expensive. There are many ways we could make the process a lot less expensive, including really utilizing alternative dispute resolution. I also would just like to point out -- and I'm sorry. I know I speak very quickly, and I'd be happy to answer any questions.

SENATOR GAFFEY: At what point in time in the process would you advise that we use the alternative dispute resolution?

JENNIFER LAVIANO: I use it at every point I possibly can until I am practically begging the school's attorney to resolve the case and I have to file. I tell parents every single day of the week, both my clients, perspective clients, and when I speak publicly, you want to avoid due process like the plague. It's miserable. It's expensive. It's awful.

SENATOR GAFFEY: Well, this is -- this is a really good suggestion, but let's practically break this down now.

JENNIFER LAVIANO: Sure.

SENATOR GAFFEY: You go through this process and, you know, there's fact finding, and, obviously, at some point in time, it would be more appropriate than -- than at other times

to initiate the alternative dispute resolution. Now you practice this law --

JENNIFER LAVIANO: Uh-huh.

SENATOR GAFFEY: -- you've got a lot of experience --

JENNIFER LAVIANO: Yeah.

SENATOR GAFFEY: -- so I know there's no cookie cutter approach to any of this, but we need a little guidance --

JENNIFER LAVIANO: Sure.

SENATOR GAFFEY: -- at what point -- at what point would we want to assert that alternative dispute resolution process?

JENNIFER LAVIANO: Well, the first step is at a PPT because you're required to give the district the opportunity to try to resolve it at that level. If you can't resolve it there, then usually we try to go to a mediation. If you can't resolve it there, maybe you file for due process and go back to a mediation; if not, a resolution session; if not, an advisory opinion. We have a lot of mechanisms in place.

I'll tell you candidly from the parent bar, I think one of the resist. -- pieces of resistance to mediation is you go to a mediation, the parents have spent all of this money on you trying to resolve it at the PPT, trying to resolve it in -- in negotiations with the district's attorney. You get to mediation. The district is now willing to do everything the parents have been asking for, sometimes for years, after they've spent thousands of dollars on a lawyer and they say

we don't want to have to pay your attorney's fees. I mean, we say, you know, the parents are looking and say, well, how come I am getting that --

SENATOR GAFFEY: Okay. So how do we short circuit that?

JENNIFER LAVIANO: Well, one way you can do it and I'm sure you're going to have a lot more people here to testify if you do it, but one thing you could do is say that attorney's fees are recoverable in mediation. You'd find a lot less due process hearings, a lot fewer due process hearings. That won't be a very popular solution, but I think it would be very useful because a lot -- I know a lot of parents' attorneys who skip mediation and file because they -- they know that the district won't reimburse the parent and the parent says, I'm not going to go for it if I'm not going to get paid for what I spent on you.

That's the reality. It's also the reality that most families, who can afford an attorney, can afford an expert. I'd litigate my cases like I have the burden of proof. This is not going to dramatically change how I do business because I am representing the parents who have the means to bring me in, except in those cases where I take them on pro bono. But I'm just letting you know this is -- most families can't afford this. Most families have no idea even how to interpret the testing that they get from their district. They don't know how to ask for the records. So, I mean, this is pushing a ball uphill so much farther than you can possibly imagine where they don't even speak the language, let alone know the rules of evidence.

And -- and I just want to make one other point

it was alluded to in earlier testimony, but I think it is compelling. There are a number of areas in the IDEA where there seems to be an uneven playing field. Okay. One of which is this, in IDEA 2004, Congress added language which is not unique but very unusual that says that if a parent uses the process frivolously to harass, intimidate, and delay, not only can the district get fees against the parent. They can get fees against the parents' attorney. That chills a lot of people from getting into parents' side special education litigation.

SENATOR GAFFEY: Has that ever occurred?

JENNIFER LAVIANO: In Connecticut, there was a case in Stamford recently where that was ordered against -- I don't believe it was a -- an experienced parent attorney member of the bar. But it has happened, and we have precedent here in Connecticut on it. So there's already this protection. If parents are using this process in an abusive fashion, they have -- districts do have protections under the IDEA 2004. That's a provision that we fought hard against, but it is what it is.

SENATOR GAFFEY: It would be interesting reading both of your briefs on this if you guys could get back to the committee.

JENNIFER LAVIANO: Well, and I will say in the M versus Wilton case, I'm -- I will have to -- the decision is a matter public record. It was filed under a pseudonym, as most of these cases are. I could obtain the parents' permission to share with you the pleadings in that case, which do make these arguments, and it was resolved by the federal judge. So I think it's important. I wish I could remember the cite. I don't, but I know I can get it to

you, and I will be happy to send it to your clerk.

The last point I just think is important to make is that the cost of this truly is really not going to be borne out in any significant way. You're going to have the same amount of litigation, if not more, if this burden is changed. I just -- seeing the way these things happen, it's not going to change anything. The school district has the burden of proof, but the moving party has the burden of production, which means if I file for due process, I go first. I have to present my witnesses first. I have to put on my exhibits. The board then responds to it. So it -- this we have to trot out every person in the district argument is just not how the system is set up in Connecticut.

So I'd be happy to answer any questions. And I know I'm a little fired up, but it's been a long day.

SENATOR GAFFEY: I think you did wonderful.

JENNIFER LAVIANO: Thank you.

SENATOR GAFFEY: Questions from members of the Committee?

Representative Reynolds, vice chairman.

REP. REYNOLDS: Thank you, Mr. Chairman.

Thank you for your testimony.

You started off for what I've been waiting for, for the last eight nine hours.

JENNIFER LAVIANO: Yeah, as have you, which I really appreciate it.

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REP. REYNOLDS: You know, with 48 states, there clearly must be hybrid models that exist in which relief is provided to municipalities with legitimate complaints while at the same time protecting the interests of parents without the knowledge and resources to advocate. You've offered ideas around the advisory opinion process, the hearing officer training, alternate dispute resolution. I would surely value you putting on paper what you think we can do to -- to achieve a more expedited process, a more balanced process. And if you're aware of other models -- we can do our own research, but if you're aware of other models that are more of a hybrid, and I don't believe it has to be all or nothing here.

JENNIFER LAVIANO: And I would be happy to offer my help.

REP. REYNOLDS: So to the degree to which you can help with that would be wonderful.

JENNIFER LAVIANO: I'm happy to and including talking to ConnCASE and whomever you would like me to speak with. The two-tiered model, for example, New York has is probably a much more expensive route to go. It adds an entire layer of administrative burden on both parents and the state, and so I wouldn't certainly recommend that, but I'd be happy to talk about other ideas.

SENATOR GAFFEY: Thank you very much.

Any further questions?

Thank you very much.

JENNIFER LAVIANO: Thank you very much.

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SENATOR GAFFEY: If you could get those cites back to our clerk --

JENNIFER LAVIANO: I'd be happy to.

SENATOR GAFFEY: -- and anything else that you'd like to add in writing for the record, I would appreciate it.

JENNIFER LAVIANO: Happy to, thank you.

SENATOR GAFFEY: Is there anyone else here tonight that remains to -- wishes to testify?

Okay. I'm just going to call you first.

I'm sorry.

A VOICE: My name is Ann (inaudible).

SENATOR GAFFEY: Are you signed up, Anne?

A VOICE: Yes.

SENATOR GAFFEY: Do you guys know what your numbers are? 54 -- Okay, 54 is first.

JILL CASTELLANI: Thank you. I'm usually asleep by nine o'clock so it's a little past my bedtime. So I'll try to be as articulate as possible.

My name is Jill Castellani. I'm a board certified behavior analyst, and I've been consulting at the public schools for the past five years.

My job includes developing and monitoring ABA programs for students with autism and related disorders, as well as training and transferring the technology of ABA to teachers and related service providers.

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There are hundreds of research articles that demonstrate the efficacy of ABA for students with autism-related disorders and other disabilities. Behavior analysts -- the methodology of ABA is used to teach behaviors, though, any behavior that we want to see increased can be taught and increased by the methods of ABA so behavior analysts absolutely work with other disciplines, with OT, speech and language pathologists, et cetera.

To comment on previous testimony about an eclectic approach, there is an article -- it's Howard Green -- it's Howard and Green, et al. I can certainly get that reference for you guys. I believe it was in 1995 that compared a group of students who received ABA only, a group of students who received an eclectic approach, which is some ABA, some speech and language, some -- some -- just general special education strategies, as well as a group of students who received no ABA at all. And the results of the study were that the students who received the eclectic approach made little progress. They made the same amount of progress as the students who received no ABA at all. And the students who did receive ABA services did significantly better so I just wanted point that out just to comment on previous testimony that an eclectic approach is better than the methodology of ABA only.

If you didn't know, I'm here to support section 2 of House Bill 5425. I forgot that part. So it's essential to have people delivering ABA services to be qualified and certified to do so. Teachers are certified; OT, speech and language pathologists, forklift drivers, massage therapists, hairdressers, they're all certified as well. So it only makes sense for people delivering ABA services

to be held to the same standards.

I also just want to point out something that wasn't mentioned because I know a lot of us have common support of this but that requiring people delivering ABA services to be certified doesn't necessarily mean that school districts have to bring an outside person in or have to hire somebody brand new. You heard testimony from special ed teachers -- and it's speech and language pathologists, as well as Jenn McCormick, who's duly certified as a teacher and behavior analyst. So it doesn't necessarily mean that this will be an additional cost to school districts to bring in -- to bring in a BACBA. You know, teachers certainly can be duly certified.

And I guess my last point is not only is this bill essential for students of autism and disabilities and their families, but it really is essential to the field of education in general. I'm a mother of two children. And the thought of sending my children to receive education from people who aren't certified in their field of practice doesn't really sit well with me, and I don't think that's something we, as parents and educators, want to accept those standards for Connecticut education.

Thank you.

SENATOR GAFFEY: Thank you, very well done.

Any questions?

Thank you very much.

Good evening.

ANNE EASON: Hello. My name is Annie Easton, and

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I'm a special education attorney. I limit my law practice to representing students with disabilities.

I had a neatly put together testimony, which I submitted earlier, but I'm going to now put that aside and comment on some of what I heard earlier because I'm quite upset about some of the untruths that came your way.

I'm here to oppose section 3 of House Bill 5425.

Okay. First, I'd like to talk about some of the so-called protections that the parents have. One of them was the protection -- one protection was the right to get school records upon request. That doesn't always happen. Just a few weeks ago, someone came in and I said, Where are the -- where are the records? Did you request them?

They said, Yes, Ms. Anne, I requested the records and they had me come into the office and they showed me records and they said, we'll make copies of what we think is important for you to have.

So it wasn't until that person got an attorney involved, myself, that they were able to get a set of records.

Next, we're talking about -- I heard about independent educational evaluations. It is true that the law says that if you don't agree with an evaluation that the school gives, you have the right to an independent educational evaluation, the IEE, at school expense. So you have that right, and if you don't get that then the school brings you to due process to prove that your -- their education is -- is appropriate. That's not what -- that's not

what really happens.

What happens is the parent goes to an IEP, you know, the meeting with the school, and they ask for an independent educational evaluation and the schools say no. Okay. Sometimes they don't say no; they say, oh, you're not happy with what we did? Let's do it again. We want to get a second bite at the apple.

And the parents say, okay. Here's something else that happens. The parents -- in a case I'm working with right now, the parent wanted a reading evaluation because their 11th grader doesn't read. And they asked -- they read -- they got some kind of list of parent rights and they asked for one of those independent educational evaluations and the school says, I'm sorry but you're only entitled to an independent educational evaluation after we do an evaluation. And we haven't done a reading evaluation so you're not entitled to an independent reading -- educational evaluation. So that's what's really happening out there.

We also -- I also heard mention of the high cost of reimbursing parents' attorneys when they win at due process. I want instructions on how that's done. Okay? I want to know because this is what happens. A parent comes in. I agree to represent them. I can't take a big down payment because they're working at Stop & Shop as a cashier for \$8.25 an hour, and, frankly, I -- I just don't know how to take a month's salary just for, you know, a couple of hours of my work. Okay.

So I try to help them on the due -- on the building level. The school is not listening. We file for due process. And we bring in a couple of -- oops. Sorry.

-- bring in a couple of evaluations to show that we actually have a decent case and the school decides to settle, not because they think, ooh, settling is cheaper than going to due process. No, the reason the school settles is because the parents came in with an evaluation that says, oops, this kid has dyslexia sorry you didn't see it for ten years. And then the school comes up with the settlement, and the settlement is give the kid an evidence-based program that they need maybe throw in a few compensatory hours but we're not going to pay the attorney fees. And guess -- what am I suppose to say to the parents, we're not settling, you know, you're getting everything you want because I'm not getting paid? It doesn't happen. That's not the way it is in the trenches.

Can I talk about one more quick thing?

SENATOR GAFFEY: Sure.

ANNE EASON: Oh, good.

SENATOR GAFFEY: You're on a roll.

ANNE EASON: All right. Let's talk about my learned sister Attorney Laubin did say that the evaluators get paid. We know that's not true.

That was settled in Arlington School District versus Murphy. Now I want you to know that I was -- I was in the Supreme Court the day that that case was heard. I was in line at 4:00 a.m. I was in the Supreme Court to hear that case argued. And there came a time when one of the justices -- chief justices said, Well, wait a minute. You're complaining about the cost of the parent evaluators. Don't the schools bring in evaluators, too?

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Now, of course, we all know the answer is, yes, because they have unlimited budgets and they bring in a lot of evaluators. And the attorney that represented the school district said, Well, no -- oh, of course, maybe they'll have a school psychologist or something, but, no, they don't have evaluators.

And I sat there in the Supreme Court and I said, My God, the board attorneys even lie at this level.

So that's -- you cannot shift the burden of proof. It's almost impossible to win these cases and it's going to be -- it's simply not fair.

SENATOR GAFFEY: Thank you very much for you passion and testimony. Appreciate you staying around all night to -- to appear before the Committee.

Any questions?

Thank you very much.

ANNE EASON: Thank you.

SENATOR GAFFEY: Any further testimony to be brought before the Education Committee this evening?

Seeing none, we'll call this hearing adjourned. And I want to thank everybody and the members that stayed this evening. Thank you very much.

A VOICE: Thank you.

SENATOR GAFFEY: You're welcome.

Dr. R. Mayo

New Haven Public Schools

March 8, 2010

Dr. Reginald Mayo
 Superintendent
 Administrative Offices
 Gateway Center
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**TESTIMONY BEFORE THE EDUCATION COMMITTEE ON
 VARIOUS BILLS**

Senator Gaffey, Rep. Fleischmann, Members of the Education Committee, my name is Dr. Reginald Mayo, I am the Superintendent of New Haven Public Schools, and I am submitting this testimony concerning a number of bills before you today.

In brief, we support H.B. No. 5421 AAC Educators and Administrators.

We have concerns about H.B. No. 5423 AAC Dissection Choice, H.B. No. 5425 AAC Special Education, and S.B. No. 377 AAC School Construction Projects.

Of the bill we support:

- **House Bill No. 5421**, AAC Educators and Administrators. We strongly support this bill. Creating alternate routes to certification for administrators and superintendents will expand the pool of highly qualified individuals to hold these positions. There are vast shortages of qualified superintendents and administrators. Providing for alternate routes to certification will enable districts to attract the highly educated personnel from the business world to transition to educational leadership positions. We support passage of this bill with a few minor revisions.
 - Section 2(b)(2) as written requires applicants to have thirty months or less of teaching experience. We would recommend amending this language to state "thirty months of teaching or other educational leadership experience." This would allow for candidates who have worked for school districts in leadership capacities to qualify for the alternative route to certification.

Of the bills where we have concerns:

- **House Bill No. 5423**, AAC Dissection Choice. We have concerns about the practicality of this bill. New Haven already has a district policy allowing opt out for general courses like Biology, but for other courses such as Anatomy we state that it is a fundamental part of the course in the description. Therefore, if a high school student signs up for the course it is a problem to then later allow the student to opt out. Most of our aquaculture school courses in that subject area do involve animal experimentation, which are again fundamental to the courses.

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Given our concerns, we would suggest referring this proposal to the Connecticut Academy for Education in Mathematics, Science and Technology for further examination of these issues.

- **House Bill No. 5425**, AAC Special Education.
 - **Section 2(a)** We have concerns about the proposed language in Section 2(a) requiring that Applied Behavior Analysis (ABA) services provided to students with autism be provided by Board Certified Behavior Analysts (BCBAs). ABA involves the activation of the principles of behaviorism, e.g., positive reinforcement. This model may be utilized by many mental health professionals. Most BCBAs are not certified educators, and are unfamiliar with teaching and learning from a curricular point of view. Additionally, ABA is utilized for many students, not only those diagnosed with autism. We are concerned that the certification requirement could extend to any student needing a behavioral intervention to have that intervention overseen by a Board Certified Behavior Analyst (BCBA). The research supports the notion that ABA works well for students possessing autism, yet, it is not the only intervention which is successful. Passage of this bill would be the equivalent to the state legislature endorsing ABA as THE treatment for autism. We oppose the inclusion of this section in the proposed bill.
 - **Section 4(h)** We also have concerns about Section 4(h) which requires any district from which a child transfers from after October 1, to continue paying for any special education services provided by the receiving district. We are concerned that this section will punish innovative districts that provide alternative programming to students in their districts including NHPS. NHPS creates programs to work with its most challenging students. Many districts with lesser scale special education programs place their severely disabled students in out-of-district facilities. Our solution would be to amend the proposed language to state that the sending district is responsible for the then current IEP as designed on the day the student enrolled in the new district. If the receiving district changes the IEP services, it should assume full cost responsibility from that point forward.
- **Senate Bill No. 337**, AAC School Construction Projects. School construction projects are required to meet LEED silver or equivalent standards, which require energy modeling. The Life Cycle Cost Analysis requirement laid out in SB 337 is redundant and brings another state agency into the already cumbersome approval process. We oppose the addition of this extra step.



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AFL-CIO

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**TESTIMONY
SHARON M. PALMER**

EDUCATION COMMITTEE

March 8, 2010

Good afternoon, Senator Gaffey, Representative Fleischman and members of the Education Committee. Thank you for providing this hearing.

I am Sharon Palmer, President of AFT Connecticut, a diverse 28,000 member AFL-CIO union. I am here today to state our position regarding several bills before you.

I would like today to remark briefly on several bills and put AFT Connecticut on record regarding our positions.

H.B. 5421 An Act Concerning Educators and Administrators – We oppose accepting non-public school teaching for certification. The teaching experiences are not equivalent or comparable.

H.B. 5422 An Act Concerning Minor Revisions to the Education Statutes – We support annual charter school reports, not biennial. Charters remain controversial and need close examination and analysis.

H.B. 5424 An Act Permitting Two or More Boards of Education to Jointly Purchase Employee Health Insurance - We conceptually support this bill and look forward to reviewing and commenting on additional proposed language. We would be more than willing to work with you on this issue.

Sharon Palmer
PRESIDENT

Melodie Peters
FIRST VICE PRESIDENT

Leo Canty
SECOND VICE PRESIDENT

Thomas Bruenn
SECRETARY-TREASURER

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Paul Krell
Ann Lohrand
Jean Morningstar
Chuck Morrell
Harry Rodriguez
Kathleen Sanner
Rick Tanasi

HB5425 9B378
9B379 9B380



H.B. 5425 An Act Concerning Special Education – We support the concept of changing the burden of proof to the requesting party. However, we believe legal aid should be available for poor parents.

S.B. 378 An Act Concerning T E A M – We support this bill to ensure a smooth and fair transition to the new T E A M program.

S.B. 379 An Act Concerning Vocational Technical Schools – We applaud the committee's work to improve the Vocational Technical Schools. A special thank you goes to Senator Gaffey. You will hear from several of our members regarding this bill.

S.B. 380 An Act Concerning Early Childhood Education Credentialing – We support this bill and hope there will be funds available for professional development.

Thank you for your time and the hearing opportunity.

P.S. On a personal note, please pass the bonding for Waterford High School.

New Haven Public Schools

March 8, 2010

Dr. Reginald Mayo
Superintendent
Administrative Offices
Gateway Center
54 Meadow Street 8th floor
New Haven, CT
203-946-8888



TESTIMONY BEFORE THE EDUCATION COMMITTEE ON VARIOUS BILLS

Senator Gaffey, Rep. Fleischmann, Members of the Education Committee, my name is Dr. Reginald Mayo, I am the Superintendent of New Haven Public Schools, and I am submitting this testimony concerning a number of bills before you today.

In brief, we support H.B. No. 5421 AAC Educators and Administrators.

We have concerns about H.B. No. 5423 AAC Dissection Choice, H.B. No. 5425 AAC Special Education, and S.B. No. 377 AAC School Construction Projects.

Of the bill we support:

- House Bill No. 5421, AAC Educators and Administrators. We strongly support this bill. Creating alternate routes to certification for administrators and superintendents will expand the pool of highly qualified individuals to hold these positions. There are vast shortages of qualified superintendents and administrators. Providing for alternate routes to certification will enable districts to attract the highly educated personnel from the business world to transition to educational leadership positions. We support passage of this bill with a few minor revisions.
 - Section 2(b)(2) as written requires applicants to have thirty months or less of teaching experience. We would recommend amending this language to state "thirty months of teaching or other educational leadership experience." This would allow for candidates who have worked for school districts in leadership capacities to qualify for the alternative route to certification.

Of the bills where we have concerns:

- House Bill No. 5423, AAC Dissection Choice. We have concerns about the practicality of this bill. New Haven already has a district policy allowing opt out for general courses like Biology, but for other courses such as Anatomy we state that it is a fundamental part of the course in the description. Therefore, if a high school student signs up for the course it is a problem to then later allow the student to opt out. Most of our aquaculture school courses in that subject area do involve animal experimentation, which are again fundamental to the courses.

New Haven Public Schools

Given our concerns, we would suggest referring this proposal to the Connecticut Academy for Education in Mathematics, Science and Technology for further examination of these issues.

- **House Bill No. 5425, AAC Special Education.**
 - **Section 2(a)** We have concerns about the proposed language in Section 2(a) requiring that Applied Behavior Analysis (ABA) services provided to students with autism be provided by Board Certified Behavior Analysts (BCBAs). ABA involves the activation of the principles of behaviorism, e.g., positive reinforcement. This model may be utilized by many mental health professionals. Most BCBAs are not certified educators, and are unfamiliar with teaching and learning from a curricular point of view. Additionally, ABA is utilized for many students, not only those diagnosed with autism. We are concerned that the certification requirement could extend to any student needing a behavioral intervention to have that intervention overseen by a Board Certified Behavior Analyst (BCBA). The research supports the notion that ABA works well for students possessing autism, yet, it is not the only intervention which is successful. Passage of this bill would be the equivalent to the state legislature endorsing ABA as THE treatment for autism. We oppose the inclusion of this section in the proposed bill.
 - **Section 4(h)** We also have concerns about Section 4(h) which requires any district from which a child transfers from after October 1, to continue paying for any special education services provided by the receiving district. We are concerned that this section will punish innovative districts that provide alternative programming to students in their districts including NHPS. NHPS creates programs to work with its most challenging students. Many districts with lesser scale special education programs place their severely disabled students in out-of-district facilities. Our solution would be to amend the proposed language to state that the sending district is responsible for the then current IEP as designed on the day the student enrolled in the new district. If the receiving district changes the IEP services, it should assume full cost responsibility from that point forward.

- **Senate Bill No. 337, AAC School Construction Projects.** School construction projects are required to meet LEED silver or equivalent standards, which require energy modeling. The Life Cycle Cost Analysis requirement laid out in SB 337 is redundant and brings another state agency into the already cumbersome approval process. We oppose the addition of this extra step. SB 337



Connecticut Association of Boards of Education, Inc.

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Testimony
Submitted to the
Education Committee

March 8, 2010

**HB 5020 AN ACT IMPLEMENTING THE BUDGET RECOMMENDATIONS OF THE GOVERNOR
CONCERNING EDUCATION**

HB 5421 AN ACT CONCERNING EDUCATORS AND ADMINISTRATORS

HB 5422 AN ACT CONCERNING MINOR REVISIONS TO THE EDUCATION STATUTES

HB 5425 AN ACT CONCERNING SPECIAL EDUCATION

SB 381 AN ACT CONCERNING STUDENTS WITH TERMINALLY ILL PARENTS

The Connecticut Association of Boards of Education (CABE) supports the provision of HB 5421, An Act Concerning Educators and Administrators, which would provide for an alternate route to certification for school administrators. It is not clear to us why the opportunity is limited to those who have 30 months or less of teaching experience.

CABE supports the provision of HB 5422, An Act Concerning Minor Revisions to the Education Statutes, which would establish May 1 as the deadline for boards of education to notify non-tenure teachers that their contracts may not be renewed. This is particularly important as boards deal with budget reductions. Providing one additional month for school district to provide non tenured teachers with notice of possible non-renewal will allow boards of education to have a clearer fiscal picture and reduce the number of unwarranted non-renewal notices. Insurance of non-renewal notices has a significant negative impact on the morale and functioning of the school districts.

CABE supports the provisions of HB 5425, An Act Concerning Special Education, which would provide that the burden of proof lies with the party requesting a special education hearing. The Connecticut Association of Boards of Education implores you to address the burden of proof issue in the proposed amendments to the special education regulations. This is an area of critical concern to board members, superintendents and many legislators. As we all struggle to deal with fiscal constraints, it is imperative to address this issue.

In Commissioner McQuillan's summary of the proposed changes dated February 3, 2010, this issue was addressed in Section 38: "Aligns burden of proof to standard established by the Supreme Court in Schaffer v. Weast: as the IDEA is silent on the issue of burden of proof, the court held that the traditional rule that the party that files the claim bears the burden of proof should apply."

Unfortunately, the March 3 summary fails to include this important change.

Connecticut is one of only two states that do not adhere to federal practices regarding the burden of proof in special education due process hearings. The current regulation must be changed to reflect the *federal legal* standard of placing the burden of proof on the party challenging the placement. The current regulation has resulted in escalating legal expenses for all boards of education in Connecticut cities and towns. One Ct. superintendent referred to the growing litigious nature of special education as a primary source of "budget

hemorrhaging'. Because of Connecticut's Regulation Sec. 10-76h-14, Connecticut school districts face more legal obstacles and incur greater costs for special education due process issues than districts in 48 other states.

We urge you to bring Connecticut into conformity with 48 other states and provide for the burden of proof to be placed on the moving party.

CABE opposes SB 381, An Act Concerning Students with Terminally Ill Parents, which would require boards of education to provide two hours of home instruction each school day to students assisting with the care of a terminally ill parent. This new mandate would create a specific entitlement to instructional time for students who are out of school because of one specific situation.

8

Education Committee
March 8, 2010

Testimony of Mark K. McQuillan, Commissioner of Education

ON

Raised Bills 379, 5421, 5425, 5426, 380, 376, 377, and 5422

Raised Bill 379: AN ACT CONCERNING VOCATIONAL-TECHNICAL SCHOOLS

The Department opposes in part and supports in part the provisions contained in Raised Bill 379, An Act Concerning Vocational-Technical Schools. While the Department understands and appreciates the General Assembly's concern for the technical high school system, the Department feels that many of the provisions in this bill will not address the issues at hand and, in fact, could potentially cause further harm. The Superintendent of the Technical High School System will expand on our position on this bill in her testimony however there are two provisions in the bill that directly impact the State Board of Education which I would like to address.

First, section 1 of this bill prohibits the State Board of Education from closing or suspending operations of any technical high school for more than six months unless a formal vote is taken. The Department firmly believes that I acted within my authority under section 10-95 of the General Statutes when I acted to suspend operations at J.M. Wright Technical High School last summer. However, we understand the General Assembly's desire for a procedural clarification on this issue moving forward and we support this provision of the bill.

Section 2 of the bill requires that two members of the State Board of Education have industrial trade or technical school experience. The Department supports this concept given the important role that the Board plays in overseeing the technical high school system. However, the Department has some concerns about the implementation of this provision given that the Board currently has twelve active members. We recommend that either the proposal be revised to expand the Board membership by two members or that the effective date be pushed back until July 2011, as five members of our Board are up for reappointment in March of 2011.

Raised Bill 5421: AN ACT CONCERNING EDUCATORS AND ADMINISTRATORS

The Department has concerns with Raised Bill 5421 which seeks to establish an alternate route to certification program for administrators and superintendents as well as to change current law to allow nonpublic school teaching experience to count towards teacher certification.

Section 2: Alternate Route to Certification for Principals and Superintendents

The Department also opposes the changes proposed in Section 4 of this bill which seek to allow students enrolled in a teacher preparation program to complete their student teaching in a non-public school. Student teachers are required under statute to be paired with cooperating teachers that are trained by the Department of Education. The Department does not provide such training for non-public school teachers nor can we use state funds to do so. Further, non-public schools do not use standardized curriculum nor do they offer special education services in the same manner as traditional public schools. Therefore, student teachers that work in a non-public school will not have the same experience student teaching in a non-public school that they will have in a public school and the Department opposes this provision.

Raised Bill 5425: AN ACT CONCERNING SPECIAL EDUCATION

The Department opposes in part and supports in part Raised Bill 5425, An Act Concerning Special Education.

Section 1: Membership of the State Advisory Council for Special Education

The Department strongly supports section 1 of this bill which contains proposed revisions to the membership of the State Advisory Council for Special Education. The Part B Application submitted by the State Department of Education for federal funding under IDEA requires that the state provide an assurance that "the State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State as found in 20 U.S.C. 1412(a)(21)(A)-(D); 34 CFR §§300.167-300.169." The federal law requires the advisory panel to be composed of at least 20 members, who are representative of the state population, and a majority of the members of the panel must be individuals with disabilities or parents of children with disabilities from birth through age 26.

Connecticut's State Advisory Council for Special Education (SAC) is currently composed of at least 38 members, appointed by various appointing authorities. The SAC is currently nearly twice as large as the federal rules require. Reduction in membership consistent with the membership requirements of the federal law is recommended to improve the functionality of the SAC.

In the past, only a few legislators made their appointments as required by statute. Also, the legislators who were appointed as members of the SAC rarely attend meetings. As a result, the SAC has frequently been forced to carry out its functions with less than 50% of its intended and authorized membership. To address this issue, this proposal reduces the number of legislative appointments and makes the legislators serving on the committee non-voting members.

In addition, by allowing the appointments of individuals with disabilities and the parents of children with disabilities to be made by the Commissioner of Education and the Governor's Office, as proposed, the Council is more likely to achieve a membership composed of the desired ethnic diversity and a balanced representation of disabilities, as required by the Federal law.

**JOINT
STANDING
COMMITTEE
HEARINGS**

**EDUCATION
PART 3
667 – 1010**

2010

(17)

5425

Molteni, J



SAINT JOSEPH COLLEGE
CONNECTICUT

3/8/2010

To Whom It May Concern:

My names I John Molteni and I serve as an Assistant Professor and Director of the Autism Spectrum Disorders Initiative at Saint Joseph College and also serve as the President of the Connecticut Association for Behavior Analysis, a professional organization from whom you will hear testimony from today. Thank you for this opportunity to provide testimony in support of HB 5425: An Act Concerning Special Education Section 2 which stipulates that applied behavior analysis services provided to students as part of their Individualized Education Plan will be overseen by a Board Certified Behavior Analyst (BCBA), Board Certified assistant Behavior Analyst (BCaBA) under the supervision of a BCBA, or other professionals whose scope of practice includes applied behavior analysis. This section provides an important step in securing quality services for children with special needs by qualified individuals who have met specific education and training requirements. I would like to make a friendly suggestion to change the terms "autism" to "special needs" as the methodologies of applied behavior analysis have been utilized and have demonstrated effectiveness across various populations of individuals.

Evidence to support the use of behavioral interventions in the education, training and treatment of individuals with and without disabilities has grown in over 40 years of basic and applied research. The impact of procedures developed from the principles of Applied Behavior Analysis (ABA), when implemented with fidelity, have led to improvements in behavioral functioning, rates of learning, acquisition of adaptive living skills, spontaneous communication, social skill development, staff performance and self regulatory behavior. The dissemination of behavior analysis at both the individual and organizational level is the subject of multiple journals within the specialty (e.g., *The Journal of Applied Behavior Analysis* and *The Journal of Behavioral Education*), international organizations (e.g., The Association for Behavior Analysis International and The Association for Positive Behavioral Support) and subgroups of national organizations (e.g. Division 25 of the American Psychological Association).

The increase in prevalence in autism spectrum disorders and related disabilities over the past decade has fueled the need for improved educational and behavioral services across the lifespan. Programs utilizing applied behavior analytic procedures are now housed in public school settings, private schools, foster care, and home-based settings. The demand for individuals with training in ABA has also increased as it has been identified as one of the only interventions with a substantial evidence base (National Autism Center, 2009; National Research Council, 2001; NYS Department of Health Early Intervention Program, 1999).

Various state organizations (e.g., Department of Disability Services, Connecticut Birth to 3) and recent legislation (Public Act 09-115, 2009) have recognized applied behavior analysis services, BCBA's and BCaBA's under the supervision as part of their reimbursement programs. Certification as a behavior analyst has also been recognized in multiple states across the nation with regard to support services for individuals with special needs. This bill will allow students to receive services from individuals with a



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level of education and training that meet agreed upon competencies in Applied Behavior Analysis. Certification also provides protection to consumers (school systems, parents and students) by providing a mechanism to evaluate the qualifications of an individual and sets a standard of professional behavior that can be evaluated and acted on in cases of misconduct. Proof of certification is easily obtained from practitioners or researched by stakeholders (e.g., school systems and parents) at the Behavior Analyst Certification Board website (www.bacb.com).

Training programs in Applied Behavior Analysis generally consist of five, 3 credit courses or 225 hours of coursework for certificate programs whereas masters programs in Applied Behavior Analysis will consist of additional credit hours. In addition, 1500 hours of supervised clinical experience is required under the supervision of a Board Certified Behavior Analyst. Programs in applied behavior analysis are currently available in two formats, online programs (21 programs) and on campus programs. Many of the online programs are run by leaders in the field of applied behavior analysis and are of the highest quality. Prior to the development of this program, the options for individuals in CT were to do an online program or leave the state to receive training. Despite these obstacles, the number of certified individuals in the state has increased. Within the past year, the number of certified individuals has increased from 134 to 185 without on campus programs in the state. Saint Joseph College just launched a program in Applied Behavior Analysis that has been approved by the Behavior Analyst Certification Board® and the Connecticut State Department of Education. Supervision is also provided to those individuals who do not have a BCBA on site to supervise them. There has been a great demand for this program from educators, related services personnel (e.g., school psychologists and speech and language pathologists), parents and others seeking Master's degrees in Special Education. We are committed to providing education and training to individuals in the coming years through the Graduate Certificate in Applied Behavior Analysis. There are four faculty members at Saint Joseph College who provide coursework and supervision for students interested in studying Applied Behavior Analysis. Eastern Connecticut State University has a training program for Board Certified assistant Behavior Analysts. There have also been discussions of developing training programs at Southern Connecticut State University and Western Connecticut State University. Within driving distance from Northeast Connecticut, programs in the Springfield area are available such as that at Elms College which provides practical experiences at the River Street Autism Program at Coltsville in Hartford, CT.

In summary, HB 5425, Section 2, is a critical first step in ensuring that students with special needs who are to receive Applied Behavior Analysis Services as part of their educational program, will have this program overseen by a Board Certified Behavior Analyst or other qualified professional as outlined in the section: Protection of all parties involved in the education of children with special needs is paramount as is the expectation that those professionals involved in Applied Behavior Analysis programs will have a level of competency to provide those services. This is and should continue to be an expectation of all individuals working with any student requiring special education services. Thank you for your time and the opportunity to advocate for students with special needs and those involved in their education and care.



SAINT JOSEPH COLLEGE
CONNECTICUT

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Molteni".

John D. Molteni, Ph.D., BCBA-D
Assistant Professor and Director
Autism Spectrum Disorder Initiative
Saint Joseph College
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Knapp

5425 (22)

Literacy Advocates

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Testimony of Sheryl Knapp to the Joint Committee on Education
March 8, 2010

Good afternoon Senator Gaffey, Representative Fleischmann and esteemed members of the Education Committee. My name is Sheryl Knapp, and I am here today to voice my strong opposition to Section 3 of Raised House Bill #5425, which shifts the burden of proof at special education due process hearings to the party requesting the hearing.

I am an independent reading consultant, as well as the parent of an elementary aged student with an intellectual disability. The birth of my daughter opened my eyes to the enormous untapped potential within students with significant disabilities, and prompted me to leave the business world to pursue a career in education and advocacy.

Every day, I see the struggles parents face to secure – and maintain – appropriate programs for their children. The only recourse they have when districts fail to provide appropriate services is due process; it's a path of last resort that no parent wants to take. Taking a school district to due process is already a daunting and costly task for families. School districts are inherently at an unfair advantage in that they have ultimate control over the entire process, from the staff members to all the testing and other information upon which decisions are made. Districts also have virtually unlimited access to experts and high-powered legal representation – all at taxpayer expense.

Placing the burden of proof on the party requesting the special education hearing would only exacerbate this imbalance of power, as in most instances it is the parents who are making the request; districts typically have no reason to initiate due process since they have ultimate control over service delivery and can simply withhold services. Due process hearings would become even more costly, accessible only to the most wealthy, and also unfair – ultimately depriving students of their right to an appropriate education.

Unless you are a parent of a child with significant special needs, there is no way to know the pressures we feel every single day regarding our children's educational programs. For students like my daughter, receiving an appropriate education will likely make the difference between her living a maximally independent, productive life and being dependent on state- and federally-funded services. Although it would in no way level the playing field in due process hearings, please at least give families a more equitable opportunity to exert their due process rights. Please delete Section 3 from Raised House Bill Number 5425.

Thank you very much for your consideration.

Sheryl Knapp

TELLIER A

8425

(20)

Amanda Tellier
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 Bristol, CT 06010
 (860) 584-5757, telliera@sbcglobal.net

March 8, 2010

Education Committee, Testimony regarding Raised House Bill No. 5425

- **Support Section 2** which requires school districts to hire qualified professionals to provide behavior analysis when included in a child's Individualized Education Plan
- **Oppose Section 3** which proposes placing the burden of proof in a Due Process Hearing to the party who asked for the hearing.

Senator Gaffey, Representative Fleishmann, and Members of the Education Committee:

I am here to offer personal testimony in support of HB 5425, Section 2 while strongly opposing Section 3.

First, let me comment on why you should support Section 2. I am the parent of a child with Asperger's Syndrome and ADHD. I consider this a full-time job because, despite the joys of this role, it is incredibly stressful and requires me to have qualifications unmatched in any field. To prepare for this job I have taken graduate level course work in special education, attended countless conferences and workshops, read books and journal articles on everything from brain development to social skill strategies to behavior modification. At the same time, I have had to develop knowledge about props from the Ghostbusters movies, the many uses of Bondo, strategies for customizing vintage VW beetle engines, and any other current interest to take over my son Caleb's thought processes. However, all this knowledge *does not* make me qualified to oversee applied behavior analysis services. For the past two years, what I *have not* had to do is teach my son how to sit for more than a few minutes at a desk, or teach him how to add exponents, or teach him how to develop and test a hypothesis, or teach him how to find the main point in a paragraph. I *have not* had to scramble to find childcare so I can go to my other full-time job while my son is isolated at home after being suspended for misunderstood behaviors that manifest from his disabilities. I don't have to do these things because Caleb is now in a program that values using research based methods of behavior analysis, overseen by a Board Certified Behavior Analyst *who is qualified* to oversee behavior analysis services.

Is it so much to ask that school districts employ properly qualified staff to provide or oversee services included in a child's IEP?

I'd also like to comment on why Section 3 should be removed from this bill. It was not an easy road getting to where we are in Caleb's current educational program and one that many families struggle to navigate. Like most families, pursuing due process was not a decision we took lightly. Throughout the lengthy and complicated legal process, my family incurred tens of thousands of dollars in attorney fees and expert witness fees. Although we prevailed, and regained most of the allowable attorney fees, it was a great financial and emotional burden that already deters many families from using the system to advocate for their children. Section 3 proposes shifting the burden of proof in special education due process hearings from the school district to the party requesting the hearing, which in almost all cases is the parent. This unnecessary change would put families at an even

greater disadvantage since school districts already possess the information and expertise regarding a child's IEP. If school districts do not have the burden of proof, I fear they will be less inclined to cooperate with parents to negotiate an appropriate program and services for the child. Districts may opt to restrict services and "draw a line in the sand" requiring parents no option but to pursue due process knowing that the parent will have the burden of proof. This will be especially true as school budgets get tighter and tighter. The result will be an increase in due process hearings for those families who can afford it or a decrease in quality education for those who cannot. Either is unacceptable.

Parents may never be on an even playing field with school administrators, teachers, special service providers, and consulting staff. At the very least, we should be able to expect that our schools use evidence based practices provided by properly qualified staff as the law requires. School districts are responsible for educating our children and should be held accountable to prove their programs are appropriate when in dispute. Please remove section 3 from raised HB 5425 and please support the important provisions of Section 2 that will ensure that our children receive behavior analysis from qualified professionals.

Thank you.



- The Behavior Analyst Certification Board (BACB) is an independent 501 (c)(3) nonprofit corporation. The BACB was founded in May of 1998 and was based on the successful State of Florida Behavior Analysis Certification Program.
- The BACB developed an agreement with the State of Florida to transfer all aspects of the Florida Certification Program, including the certification examination, to the BACB. The first BACB examination administration was conducted in May of 2000.
- Shortly after the BACB was formed, all states that used the Florida examinations as the basis of their state certification programs (CA, TX, PA, OK, NY & FL) transferred their certificants to the BACB and closed their programs.
- The BACB is endorsed but independent from:
 - The Association for Behavior Analysis International,
 - American Psychological Association, Division 25 (Behavior Analysis),
 - The Association of Professional Behavior Analysts,
 - The European Association for Behavior Analysis.
- The BACB certifies individuals as Board Certified Behavior Analyst (BCBA) level that requires a Masters' degree or above, 225 contact hours of specific university Graduate coursework in behavior analysis, and 1,500 hours, or equivalent, supervised experience. The Board Certified Assistant Behavior Analyst certification requires an individual to have a Bachelor's degree or above, 135 contact hours of university coursework, and 1,000 hours, or equivalent, supervised experience. BCBA's with Doctorate degrees may apply for the BACB-D designation. As with most professions, BACB certificants are required to obtain continuing education units to maintain their certification. BCaBA's must be supervised by BCBA's. Approximately 67 percent of the candidates who qualify for and take the examinations pass.
- BACB BCBA and BCaBA certification programs are accredited by the National Council for Certifying Agencies, of the Institute for Credentialing Excellence. The NCCA is one of two agencies that provide accreditation for national credentialing bodies such as the BACB. NCCA nationally accredited programs meet the high program and psychometric standards established by NCCA (standards attached).
- The BACB is the only professional certification program in applied behavior analysis and it has over 7,000 certificants in excess of 25 countries. Most states recognize BACB certification in one manner or another. Several states have included requirements for BACB certification in statute, rule, or regulations and 3 states use BACB certification as the basis for licensure.

Shook cover letter regarding BCBA legislation

-----Original Message-----

From: Jerry Shook [mailto:shook@bacb.com]
Sent: Thursday, March 04, 2010 5:27 PM
To: Suzanne Letso
Subject: BACB credentialing information

Dear Ms. Letso:

Thank you for the opportunity to provide information on the Behavior Analyst Certification Board (BACB) and credentialing as it applies to consumer protection in Connecticut.

I have attached information on the BACB and its certifications that will give you an overview of the BACB and its current status. I also have attached the National Commission on Certifying Agencies (NCCA) standards used in accrediting our certification programs.

I would be pleased to answer any questions of Connecticut legislators or government officials regarding BACB certification via email, telephonically, or in person.

Please contact me if you have any questions or if I may be of further assistance. I look forward to hearing from you.

Regards,

Jerry

Gerald L. Shook, PhD, BCBA-D
Chief Executive
Behavior Analyst Certification Board
California CE Office: 530 878 8757
CEO Email: Shook@BACB.com

Florida Main Office: 850 765 0905
Office Email: Info@BACB.com
www.BACB.com

- Over 165 universities worldwide have BACB approved course sequences. Over 20 of these universities offer distance-learning training that most meet the same approval standards, and typically results in essentially the same pass-rate, as campus-based university training.
- The BACB began the process of developing a specialty credential for BCBAs who work with individuals with autism. It elected not to pursue the specialty credential when a subject matter expert panel that was convened by the BACB to develop autism examination content determined that all behavior analysis content required to work with people with autism was already included in the BCBA examination. The non-behavior analytic content suggested by the panel is attached.
- The BACB recommends that states simply recognize certification rather than incur the expense and problems inherent with licensure. The BACB offers the only behavior analyst credentialing program and it has become accepted as the International standard. Its certifications are accredited by the NCCA and are recognized by most states (including CT in the recent insurance legislation and by the CT Birth-to-Three Program). BACB certification would be an appropriate substitute for a state-run licensure program because it adheres to the same high standards as licensure. BACB examination content and eligibility requirements undergo periodic review by expert behavior analyst practitioners and university faculty worldwide to ensure that they are current with the emerging field. Use of the BACB credential is a cost-neutral alternative to creating a state-run licensure program and would facilitate recruitment of qualified individuals from an international pool of certificants. In addition, it will ensure that the credentialing requirements for behavior analysts working in public school are the same as those required by insurance companies and the CT Birth-To-Three System. However, should a state find it is necessary to license behavior analysts, it can join the increasing number of states that have used BACB certifications as the basis of a cost-effective means to implement a robust behavior analyst licensure program.
- Pennsylvania has passed a law giving the commonwealth the authority to establish a license for behavior specialists. The license, as it appears in law, would not be in behavior analysis and would lack the requisite components and rigor to be a viable professional credential. The law requires that the individual have a Masters' degree and meet minimal and ill-defined education and supervision requirements. There is to be no written examination, which is the component that is at the heart of any legitimate professional licensure program. This "licensure" flies in the face of consumer protection because there is no system for meaningful determination of qualified individuals. In many respects it is worse than no credential at all. Consumers may believe that practitioners who are "licensed" by the state are vetted and qualified to provide applied behavior analysis services and ask no further questions.

**BEHAVIOR ANALYST CERTIFICATION BOARD®
TASK LIST FOR BOARD CERTIFIED BEHAVIOR ANALYSTS®
WORKING WITH PERSONS WITH AUTISM®**

CONTENT AREA A: COMMUNICATE THE HISTORY AND CULTURE OF AUTISM TO THE AUTISM COMMUNITY, CONSUMERS AND THE PUBLIC

#	TASK
A-1	Discuss key historical events with the autism community, consumers, and the public.
A-2	Discuss current and local cultural conditions influencing treatment choices for autism.
A-3	Explain myths, fads, and controversies to consumers and the public.
A-4	Discuss movements, legislation, and legal issues with consumers and the public.

CONTENT AREA B: ASSESS, DESIGN, AND IMPLEMENT INTERVENTIONS TAILORED TO CHARACTERISTICS OF AUTISM AND INDIVIDUALS WITH AUTISM

#	TASK
B-1	Understand general considerations.
B-2	Understand diagnostic practices and their implications; communicate to consumers and others.
B-3	Identify associated characteristics and conditions.

CONTENT AREA C: EXTRACT RELEVANT INFORMATION FROM VARIOUS SOURCES FOR PLANNING INTERVENTIONS AND COMMUNICATING WITH CONSUMERS

#	TASK
C-1	Research the relevance, reliability, validity, and proper use of various assessment instruments.
C-2	Understand limitations of norm-referenced measures for drawing inferences about behavior and planning intervention.
C-3	Extract relevant information from the following assessments to establish behavior analytic and collaborative intervention priorities: <ul style="list-style-type: none"> • communication skills assessments • mental health assessments • vocational skills assessments • adaptive skills assessments • motor skills assessments • academic skills assessments • cognitive skills assessments • developmental skills assessments • behavior problem checklists and other instruments • social skills assessments • medical and quasi-medical assessments
C-4	Research best scientific evidence regarding validity and necessity of medical and "biomedical" tests, limitations of inferences that can be drawn from them.

CONTENT AREA D: EXPLAIN DIAGNOSTIC PROCEDURES

#	TASK
D-1	Communicate status of current research on etiology.
D-2	Summarize diagnostic criteria - current and evolving.
D-3	Extract relevant information from diagnostic tools to establish behavior analytic and collaborative intervention priorities.
D-4	Distinguish among diagnostic categories.
D-5	Identify common co-morbid conditions.
D-6	Summarize information regarding epidemiology for consumers, public, etc.
D-7	Explain clinical, legal, educational, and research implications.
D-8	Refer consumers to professionals who can diagnose.
D-9	Use screening tools.

CONTENT AREA E: DEVELOP SYSTEMS AND SUPPORT	
#	TASK
E-1	Work with families.
E-2	Manage funding and resources.
E-3	Maintain public and professional relations.

CONTENT AREA F: IMPLEMENT CURRICULA	
#	TASK
F-1	Use existing curricula.
F-2	Customize curricula.
F-3	Develop a scope and sequence across domains.

CONTENT AREA G: NON-BEHAVIOR ANALYTIC INTERVENTIONS	
#	TASK
G-1	Differentiate behavior analytic from non-behavior analytic interventions.
G-2	Research best available scientific evidence on non-behavior analytic interventions.
G-3	Critically evaluate the evidence regarding effectiveness, efficacy, and side effects of a non-behavior analytic intervention (including documented or potential interference with behavior analytic intervention).
G-4	Educate consumers about risks and benefits of alternative interventions and combinations of interventions.
G-5	Educate other professionals and organizations (e.g., school districts, government, insurance companies) about risks and benefits of alternative interventions and combinations of interventions.

CONTENT AREA H: IMPLEMENT SAFE AND EFFECTIVE EMERGENCY PROCEDURES	
#	TASK
H-1	Understand the philosophy and behavior analytic considerations when considering the use of emergency procedures (e.g., risks and benefits).
H-2	Develop and use emergency procedures.
H-3	Use physical and non-physical emergency management techniques.

CONTENT AREA I: USE RESEARCH TO DESIGN, IMPLEMENT, AND EVALUATE BEHAVIOR ANALYTIC INTERVENTIONS FOR PERSONS WITH AUTISM	
#	TASK
I-1	Search and evaluate the relevant literature.
I-2	Critically evaluate studies and reviews using scientific rules of evidence, considering efficacy, effectiveness, efficiency, side effects, and limitations.
I-3	Maintain a community that encourages keeping up to date on research developments.

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BEHAVIOR ANALYST CERTIFICATION BOARD®

Gerald L Shook, PhD, BCBA-D

Chief Executive

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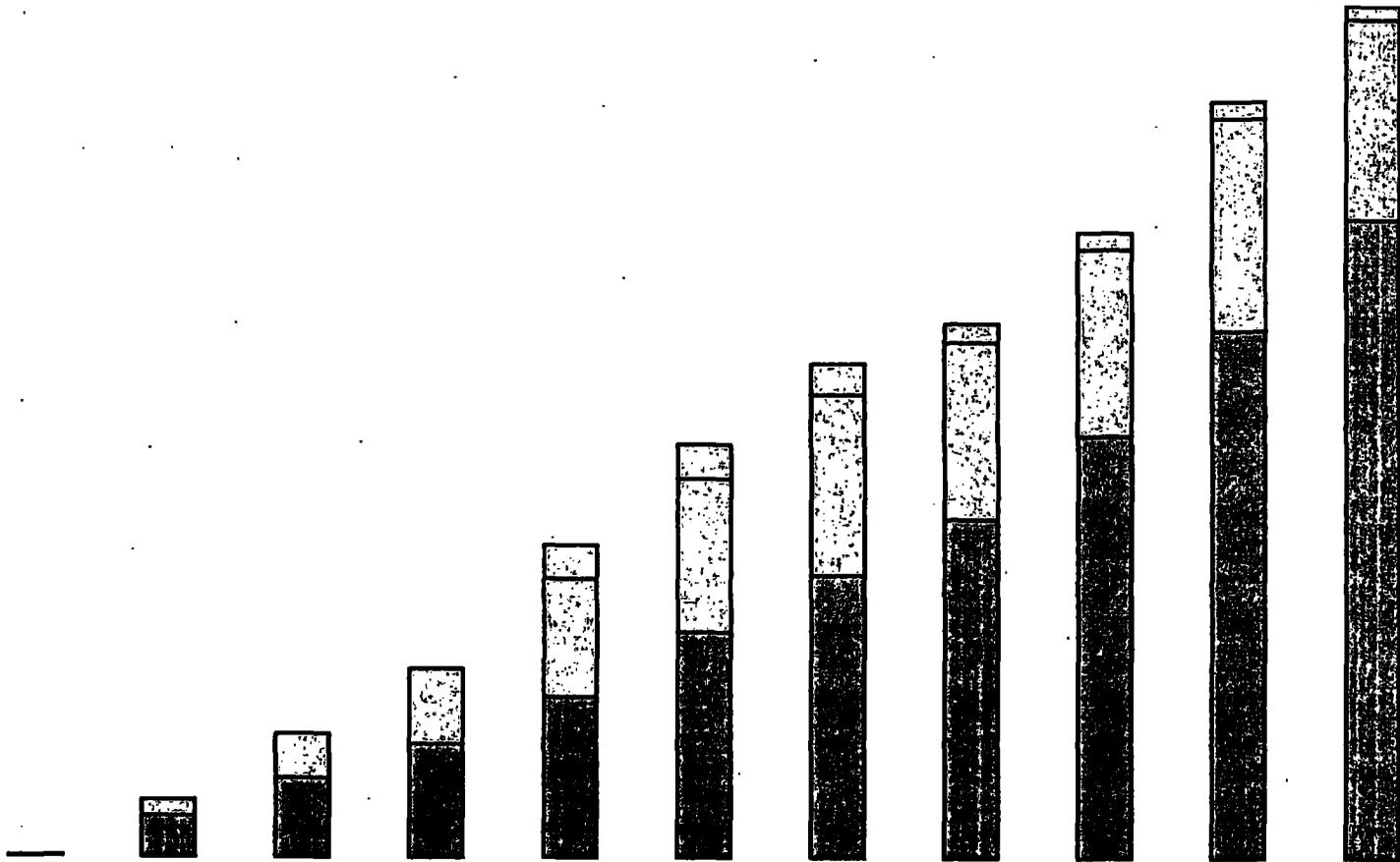
CT data

LEVELS OF CERTIFICATION

- **Board Certified Behavior Analyst (BCBA)**
Requires Master's degree or above
 - **Board Certified Behavior Analyst-Doctorate (BCABA-D) Requires Doctorate**

- **Board Certified *Assistant* Behavior Analyst (BCaBA)**
Requires Bachelor's degree or above

CUMULATIVE # OF CERTIFICANTS



U
E
R

RECENT PASS RATES

DECEMBER 2005 68% pass

MARCH 2006 68%

AUGUST 2006 67%

NOVEMBER 2006 67%

MARCH 2007 65%

AUGUST 2007 68%

NOVEMBER 2007 65%

MARCH 2008 67%

AUGUST 2008 67%

NOVEMBER 2008 66%

MARCH 2009 66%

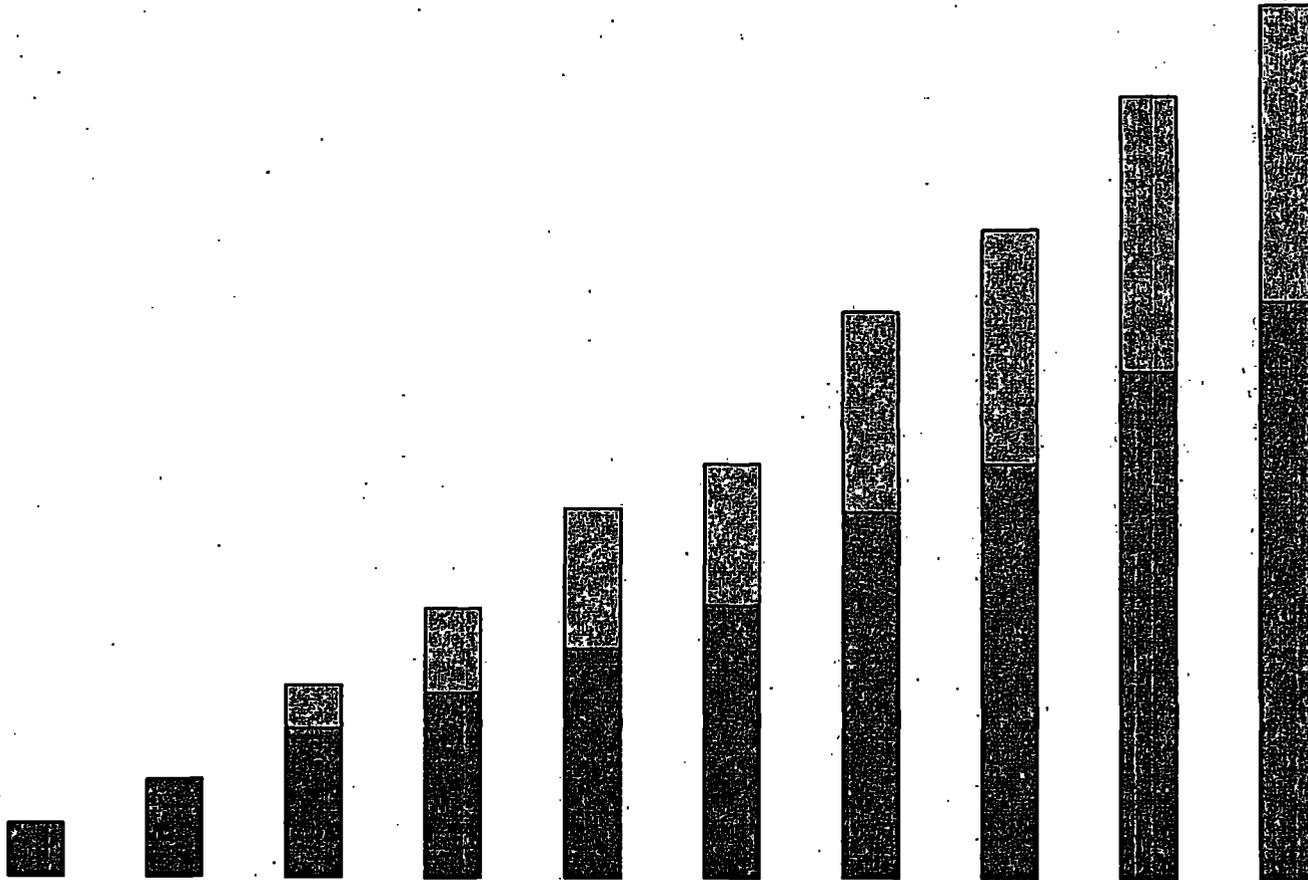
AUGUST 2009 68%

NOVEMBER 2009 68%

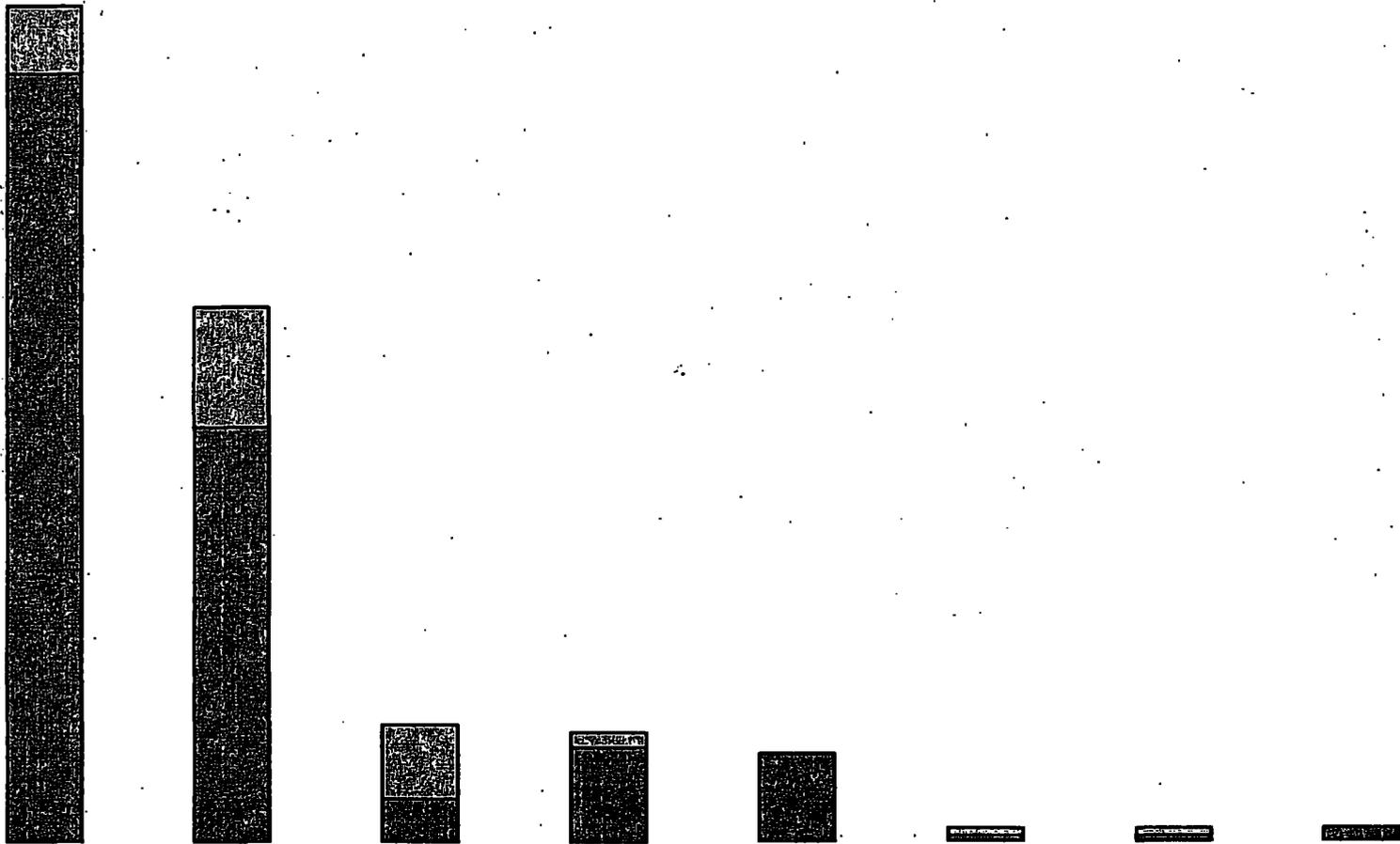
BACB-APPROVED COURSE SEQUENCES

- 80-90% QUALIFY w Approved Course Sequence
- 169 UNIVERSITIES – 237 ACS
- 33 NON-US UNIVERSITIES – 41 ACS
- 25 DISTANCE LEARNING ACS – Train Worldwide
- 212 ON-CAMPUS ACS
- 157 BCBA - 20 BCaBA ACS
- 50 ACS w Approved University Experience

CUMULATIVE COURSE SEQUENCES



US & NON-US *COURSE SEQUENCES* PER ACADEMIC DEPARTMENT



□
□

5425-
Castellani (62)

Jill E. Castellani, M.S., BCBA
523 Swamp Road
Coventry, CT 06238
(203) 606-8707
3-8-10 Hearing – Testimony

- I am a Board Certified Behavior Analyst, BCBA, who has been consulting to public schools for the past five years. My job includes developing and monitoring ABA programs for students with autism and related disorders, as well as training and transferring the technology of ABA to special educators and related service providers.
- There are hundreds of research articles that demonstrate the efficacy of applied behavior analysis in teaching students with autism. ABA is now widely recognized as the treatment of choice for these students. Many schools in Connecticut are including ABA for students with autism in their IEP's. It is essential for the individuals delivering ABA services to not only hold expertise in applied behavior analysis, but to be certified.
- Teachers and related service providers are required to hold certification. In addition, hairdressers, forklift drivers, massage therapists, graphic designers, accountants, and more are required to hold certification in order to practice within their field – there is no reason why individuals practicing within the field of ABA shouldn't be held to the same standards and be required to be certified behavior analysts, certified assistant behavior analysts being supervised by certified behavior analysts, or a person licensed by the Dept. of Health or certified by the State Department of Education whose scope of practice includes behavior analysis.
- It is crucial for individuals working with our special education students, who are a vulnerable population, to have the necessary expertise and credentials in implementing programs. These individuals are helping our children with disabilities learn more effectively, and this is the one chance our children have of learning skills necessary to produce socially significant outcomes for themselves and their families. As a vulnerable population already, our special education students are susceptible to sub-standard services and those that may not be producing positive results. Section 2 will support our students with autism whose IEP's mandate ABA by making sure they are receiving their services by a person with expertise and credentials. It is too risky for our children, as well as our families, to not pass this bill.
- Not only is this bill essential for our students with autism and their families, but it is essential to the field of education globally. Not only am I a BCBA, but I am a mother, and to be sending my two-children to school to receive educations from people who are not certified in any field of practice is beyond comprehension, and not at all what we as parents and teachers should accept as the standard for Connecticut education.



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March 8, 2010

Education Committee
 CT General Assembly
 Legislative Office Building
 Hartford, CT 06106

Attention: Sen. Thomas P. Gaffey and Rep. Andrew M. Fleischmann

Re: Raised H.B. No. 5425, Session Year 2010
 Emailed to chris.calabrese@cga.ct.gov and also sent via first class mail

Dear Sen. Gaffey, Rep. Fleischmann, and the Education Committee members,

Please accept this letter as testimony for my support of Section 2, and opposition to Section 3 of H.B. No. 5425: AN ACT CONCERNING SPECIAL EDUCATION.

Section 2 of this proposed bill must be passed. Reasonable people agree, and the laws mandate that public schools must use evidence based practices for students receiving special education services. Studies show that applied behavior analysis (ABA) improves outcomes individuals with autism. Hence, the individuals who use ABA with our students must be properly trained.

Section 3 of this proposed bill will significantly harm students with disabilities. **The Burden of Proof must not be changed!!!!** I speak on behalf of my clients, students with disabilities and their families, most of who are unable to speak for themselves, and who do not comprehend the gravity of the consequences this bill would have on their ability to receive an appropriate education. Please remember that the purpose of special education is...

(a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(b) To ensure that the rights of children with disabilities and their parents are protected; (§ 300.1 IDEA 2004).

The purpose is NOT to cut costs nor weigh the competing needs of municipal budgets against costs of educating our most vulnerable children.

Connecticut must continue keep the burden of proof on the School District – the party who possesses and controls the information upon which the decisions are made. Do not shift it to the parents who may have tremendous difficulty obtaining the information. This gross imbalance of power

necessitates placing the burden of proof on the school district, the party with greater access to necessary evidence, based on the fundamental principles of fairness. The goal of IDEA 2004 is to provide a free appropriate public education to children with disabilities. As we know, if the parents and the school district reach an impasse over the contents of an IEP, either side can request due process; however, practically speaking, it is almost always the parents who initiate due process because the school district typically can simply withhold the needed services, another illustration of this imbalance of power. This places an onerous burden on families to prove that the program is not appropriate, without the school having to assume any burden to prove that their program is appropriate.

Thank you very much for your consideration of this point of view. I implore you not to change the current regulations in Connecticut in connection with burden of proof. I also ask that you use properly trained staff to work with students with Autism.

Respectfully yours,

Anne Eason

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Law Offices of Anne I. Eason, LLC
10 Wall Street
Norwalk, CT 06850
www.spedlawyers.com

5425

Laviano, J

(6)

Regarding HB 5425: Support Section 2 and Defeat Section 3

March 7, 2010

Members of the Education Committee:

My name is Jennifer Laviano, and I am an attorney in private practice in Sherman, Connecticut. My entire practice is dedicated to the representation of children and adolescents with disabilities throughout the special education process. I write to you regarding HB 5425.

First, I wish to address Section 3 of the proposed bill, which seeks to alter our State law regarding the Burden of Proof in Special Education Due Process Hearings. This same language was proposed not a year ago, and I wrote and testified at that time as well, and was very appreciative that the Committee made the right decision not to overturn a Connecticut regulation which has been in place for over a decade, and which places the Burden of Proof that a Free and Appropriate Public Education has been offered on the school district whose obligation it is to educate the child who is the subject of the Hearing.

To be clear, the language which is proposed does not state that the Burden of Proof would now rest with Parents, but please make no mistake: that is exactly what it means. This is because cloaking the language in a pretense of making the Burden of Proof fall on the "moving party" functionally places that Burden on Parents of children with disabilities, who initiate the vast majority of the Due Process Hearings. The rare cases in which school districts initiate the Hearing almost always surround whether or not the child requires a certain evaluation, NOT whether the child is receiving an appropriate program and proper services.

The IDEA and our Connecticut special education laws mandate that each local educational agency provide a Free and Appropriate Public Education to each child identified for special education and related services. If a Parent disagrees with those services, the mechanism which exists for them to challenge the program is the Due Process Hearing. While many school districts claim that litigation is rampant in this field, the numbers do not bear this out. I have confirmed with the CT State Department of Education just this week that of the over 200 cases which were filed last year (2009) only 7, that's SEVEN, proceeded to a full Decision. Seven cases in the whole year, throughout the entire State, were fully adjudicated. The rest were either withdrawn or dismissed, usually because the parties find a way to work out their disputes, but also because often, parents just give up.

The average parent can't afford experts or a lawyer. They face in a Due Process Hearing a school district which has in its employ special education teachers, regular education teachers, school psychologists, speech pathologists, physical therapists, social workers, not to mention often doctoral level administrators, all of whom can testify on the district's behalf. The district also maintains all of the child's education records, and has the benefit of having several staff members who spend all of the school day with the child, and who regularly communicate with

one another. The Parents, on the other hand, are often going on their instinct that their child is not receiving an appropriate program, and often they have been denied or restricted in their requests to observe their child in school. They may have had one or two meetings with the child's team all school year. As to the child's disability and what kind of intervention is necessary to remediate it, the Parents are going on maybe what they've read in books or online, if at all. Usually, they have no idea how to interpret the assessments done by the district. The Parent is almost certainly operating under the disadvantage of never having gone through the process before, whereas many Special Education Directors have been through the process on several occasions throughout their career, and they have received formal training both on the law and the process before. Sometimes, school districts elect to even have the Board's attorney handle the case for them, against a parent who is proceeding pro se. Finally, of course, the Parent is challenged by the fact that they are highly emotionally invested in the outcome of the case, since it is their child's education and future at stake. Add to this the anxiety of having to miss work in order to be present at the Hearings.

All of these factors and more exist now, today, in Connecticut, EVEN WITH the Burden of Proof resting with the school district. Does it seem remotely fair to add to the Parents' disadvantage by giving them the Burden of Proof as well? Does it make sense to do so over seven cases a year that can't be resolved amicably?

I urge the Committee to vote against the proposed change to Section 3, and leave the Burden of Proving that an appropriate education was offered where it properly lies: with the educational agency charged with the responsibility of providing it.

Next, I turn to Section 2, which seeks to establish a basic requirement of certification for individual who profess to be able to provide behavior analytic services to children with disabilities when their IEP calls for it. To be clear, nothing in this section is requiring that such services be mandated for any children; only that, when they are offered, the IEP must include an individual who is properly credentialed to provide it.

On so many occasions, I have been contacted by Parents whose children require ABA services, and whose IEPs so indicate, but on whose team there is no individual who is properly trained to actually implement this part of the child's program. As a result, not only is the child not receiving an appropriate program, but the entire team, including the parents and the educators, have no idea whether ABA actually works, because the student isn't really receiving it. Future decisions are made without proper intervention ever having been given, and the child loses out on precious time within which to gain necessary skills. I strongly urge the Committee to vote in favor of Section 2.

I thank the Committee very much for its time and consideration of these important issues.

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000780

Swanson, J

59

Testimony on HB 5425: An Act Concerning Special Education

Submitted by Julie Swanson

293 Main Street

Durham, CT 06422

Twelve years ago, I filed the second ABA due process case in the State of Connecticut that fought for ABA services for my child. Part of the problem was that the school did not have a board certified behavior analyst as an integral part of my son's education team. I was fortunate enough to prevail. I went on to become a special education advocate in private practice and help other parent's secure appropriate services for their children with ASD.

All these years later, nearly every family who retains me does so because one of the integral aspects of their child's program is not appropriate – that is that behavioral analysis is not being conducted by qualified professionals. As an advocate, this issue is at the heart of almost every case in which I am involved.

We must insist that qualified professionals deliver these services in school, just as we insist that certified and qualified professionals deliver speech and language services, occupational and physical therapy services, psychological services, social services and academic instruction.

It is my strong belief that if we do not hold the same expectations, or that we treat the delivery of these services inequitably, that we are discriminating against children who require this level of expertise.

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Dr Zwicker Testimony for Section 2 and Against Section 3 of HB5425

I am wearing a bright orange tie today because it is my son's favorite color and to signify to all of you how important it is for me on his behalf to strongly support section 2 of this bill and strongly oppose section 3. Caleb is 4 years old and has autism. When he entered preschool in Hamden, he had never eaten solid food, had no language at all, spent most of his day spinning wheels on toy cars and trucks, and had made no developmental progress since infancy. The teachers and director of the program told me that they had the expertise and an ABA room in the school that would be perfect for him. ABA has been shown through thousands of studies to be the most effective treatment for children with autism – which is why it is so prevalent in schools now across the country and why it is now covered by insurance companies in Connecticut, California, and several other states when provided by a nationally board certified behavior analyst.

What my son got at preschool was an ABA environment that was what they knew how to offer, not a good ABA program. When I asked what training the teachers in the room had in ABA and how many behavior analysts they had working in the program, they indicated that they received 4 hours of consultation a week from a board certified behavior analyst and had taken a few classes and had professional development on ABA and working with children with autism. They assured me and Caleb's mother that they had decades of experience and all the right expertise while we sat around the table discussing Caleb and his ABA program. Their cute anecdotes about Caleb and apparent expertise convinced Caleb's mother, a Yale researcher, that they were doing the right things. The school had no data and could not demonstrate that they were making progress on Caleb's two biggest deficits – eating solid food and language.

How do I know what good looks like and why was I so frustrated? I have a doctorate in applied behavior analysis and I had spent years working in homes and with schools with people of all ages who have developmental disabilities. A good ABA program relies upon constant behavioral data collection and using specific behavioral methods of teaching in a 1:1 and small group environment as well as behavioral incidental teaching throughout the day. Services are provided by trained ABA therapists and overseen daily by a board certified behavior analyst.

I paid out of pocket for a BCBA from ACES to work in the evenings and on weekends with Caleb. She got him eating and speaking in just 2 weeks – something neither the school nor Birth to Three service providers had managed to accomplish in 2 years of trying.

I kept pushing the school and urged my son's mother to move to New York or California because they had good ABA services in schools and it was covered by insurance in home as well. After 4 months trying to push the school to provide appropriate services, I noted that my

next steps were through Due Process and a lawsuit. It should not have taken that step to get Caleb what he has now in preschool, 30 hours of ABA programming each week by a trained therapist overseen daily by a board certified behavior analyst. Caleb has gained on his typical peers to the point that in my expert opinion he is likely one of the 20% of children who recover from autism through intensive, early treatment by qualified professionals – BCBA's. I don't want to have to go through the same process next year when he goes into Kindergarten in a different Hamden school. I recently stopped traveling across the county each week coaching executives and leaders of Fortune 50 companies and began working for ACES (Area Cooperative Educational Services) so I can make sure Caleb has the appropriate ABA services to continue his recovery and so other children have that same level of ABA support.

I am here on Caleb's behalf and to make sure that all Connecticut children with autism have the same quality ABA services, when identified in their IEPs, that Caleb son has and that other kids don't need parents with Ph.D.s in applied behavior analysis to ensure that they get high quality ABA services. The schools need clear direction through section 2 to know that when ABA is provided that it must be provided by and supervised by qualified behavior analyst. I am here also to ensure that parents do not have the additional burden of being an expert in the area of their child's disability and exactly what treatment is most effective and who is qualified to provide it and exactly what it should look like to get a quality ABA program for their son or daughter. Parents should not be required to hire experts like me at their own expense to explain what the school should already know and be doing. I strongly support section 2 and oppose section 3 for my son and all kids with autism in Connecticut.

Thank you for listening today and for including section 2 and removing section 3 of HB5425 on behalf of Caleb and the thousands of other kids in Connecticut like him.

Thomas J Zwicker, Ph.D.

139 Peddlers Drive

Branford, CT 06405

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee,

I am writing as a parent of a 4-year old with autism and a Behavior Analyst who works for a regional educational service center serving southern Connecticut to strongly object to the provision in Proposed Bill HB 5425 that establishes that the burden of proof lies with the parents when requesting a special education hearing on whether the school's efforts are the most appropriate for educating a child.

The current law states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP).

The current law reflects well-settled Connecticut policy.

The current law is the only means parents have to address inappropriate educational programming and settings for our children when the school refuses to consider evidence-based practices and make based decisions based on what has the best evidence behind it for someone like my son. I have seen schools most often provide only what they readily know how to provide even when those services do not have the scientific evidence behind them as the most appropriate and effective. Rather, schools often provide what they are capable of providing given the specialties that they have on-hand already without making any changes to staffing or normal routine.

All the advantages lie currently with the school in cases of due process. First, school districts are in control of all of the child's records, the child's staff, and multiple experts. I know because I am one of those experts as a Behavior Analyst working with children with autism and older students who have behavioral problems. I am routinely called to schools to consult and I see that they do what they can, but often it is not at all effective and children continue to slip further along from year to year as problems continue and worsen. Schools have unlimited access to all the information about the program they are providing. They can use their own staff as expert witnesses and call upon people like me as well to help them.

Compare the schools to the my son's mother, as a well-educated parent of a 4 year-old with autism. My son's mother he has a Masters in Public Health from Yale and is a researcher at Yale and yet even she does not understand the jargon used at the IEP meetings and does not know to ask the right questions about our son's education and what is most effective versus what the school is indicating is needed. If it were not for my professional expertise and persistent pushing, access to friends around the country who are even more expert than me, and the current focus to put the burden of proof on the school, our son would still not be speaking (he is now a chatterbox and has almost caught up to all his typical peers), be focusing on hanging up a backpack in school (his original program when he entered preschool) even though he entered school not eating any solid food - he only drank two types of liquids and had never had solid food. The school implemented an entirely ineffective program that did not even involve the basic skills needed for eating, but rather sensory stimulation around his mouth which had failed several times when tried earlier in Birth to Three. Yet, that was what the school personnel knew how to do so they kept doing it. I insisted on using a behavioral (ABA) approach and my son started eating solid food for the first time within just one or two sessions once the behavioral program was initiated. If I had to go through Due Process, I would have to spend at least \$3000 to get my own expert to testify and finding an expert is problematic particularly when I had exhausted all the experts in the area who the school thought would be helpful. Most parents do not know who would best be able to help them with their child's educational issues and what would be a better, more appropriate educational program and setting. I was fortunate to happen to have the right expertise to help my

son, but everyone I spoke with inside and outside of the educational world have commented that they have never before had a parent with my type of expertise who happened to also have a child with autism come to them and describe so precisely what was needed based on scientific evidence and decades of practice.

Overall, There exists a huge imbalance of power favoring school districts and this bill would tip the balance so far in their favor that thousands of children and their parents in Connecticut would have no voice and no way to prove that the program the school is providing was inappropriate. This bill is not in the best interests of the children in Connecticut and removes a key means by which parents can impact their kids' education for the better when they see something wrong that impacts their children.

To add insult to injury, historically the majority of hearings reviewing the delivery of special education services to students with disabilities, kids like my son, are already decided in favor of the school districts.

This bill proposes a drastic 180 degree change of the burden of proof in special education due process cases. It would make due process hearings excessively costly and force someone like me and my son's mother to go heavily into debt, move to another state, or simply give up because the challenge would be insurmountable. I want to ensure that I have a fair hearing with any reasonable chance of prevailing to ensure my son gets the treatment he needs to continue his recovery from autism.

I'd be happy to talk with anyone in person about my passion and professional experience related to this problem and

Thank you,

Thomas J Zwicker, Ph.D.
139 Peddlers Drive
Branford, CT 06405
Cell: 914-318-4279
zwickto@excite.com

5425

000785

A. Hornstein

Ms. Abigail Hornstein
14 Deane Court
Norwalk, CT 06853-1005

March 6, 2010

Dear Representative Fleischmann:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism.

But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Abigail Hornstein

5425

A. Zambrzycka

Ms. Adrianna Zambrzycka
15 Biship Avenue
Southington, CT 06489-2317

March 8, 2010

Dear Representative Fleischmann:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism. But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Adrianna Zambrzycka

The proposed change putting the burden of proof on the families is a mockery of justice and fairness. The school system deals with dozens of cases each year, and is well versed in the law, has as its primary goal to save the state money. The family usually has one child with special needs, has no training in debating the "finer" points of the law, and has as its primary and singular goal the appropriate education for their child, regardless of the budget.

There has never been an equation of equality between family and "Team". This proposed law effectively destroyed any chance for a family to obtain a suitable public school education for its disabled child.

So much for an inclusive education; one step further towards renewed, educational ségregation.

Shame on the State of CT.

Alice Pomper

apomper@sbeglobal.net

5425

Rohdie A

Members of the Education Committee,

I have been working with children and adolescents with autism and other developmental disabilities for over 15 years. I have dedicated much of that time educating children in public schools, and I've been responsible for training educators in the public domain. Currently, my practice largely consists of performing Independent Educational Evaluations of student's programs to determine the appropriateness of the program in meeting a child's educational needs. It is from this experience that I respectfully urge you to support Section 2 of HB 5425.

At this time, public schools are desperately trying to educate children with autism and related disabilities using the teaching methodology of applied behavior analysis- a model with a large body of empirical research proving its effectiveness. But, schools are largely failing in the execution simply because they do not have the right personnel overseeing the implementation of services. I see school districts time and time again attempt to provide appropriate services for a child only to have it fall apart due to poor supervision. Schools are wasting funding money on unqualified professionals to oversee programming. Like any other service provided in school (occupational therapy, speech-language therapy) ABA services require the oversight from qualified professionals and schools should be able to rely on a license or certificate to know who is qualified. Let's stop wasting the tax payers dollars and recognize the credentials necessary to appropriately educate our children with special needs!

Finally, I ask you to carefully consider the dangerous implications of Section 3 of HB 5425. Placing the burden of proof of the "moving party" is placing children with special needs educations at severe risk. I lived and worked in New Jersey when this change was made and it forced children to fail in a school setting before a case could be made for service changes. It caused unnecessary stress on families already in crisis and lost valuable time in a child's life. New Jersey, like other states, reversed this decision after recognizing a complete failure of the legal system to protect children's rights to a free and appropriate education. Let's not make the same mistake in Connecticut. It is our ethical responsibility to protect children who often do not have a voice of their own.

Respectfully submitted,
Alisa Slatin Rohdie
Board Certified Behavior Analyst
Director, Southfield Center for Development Autism Spectrum Disorders
Clinic
85 Old Kings Highway North
Darien, CT 06820
203-249-9880

8425

Bell, A

Dear Members of the Education Committee:

I am writing to express my support of House Bill # 5425. As a member of the Darien Board of Education as well as the parent of a child receiving special education services in the Darien Public Schools, I think it's fair and appropriate that Connecticut's due process burden of proof requirement be aligned with the U.S. Supreme Court and the vast majority of states across the country.

The current Connecticut State Board of Education burden of proof regulations may have good intentions as a means of protecting children, but the outcome should be improvement in the quality of services for children. I am concerned that just the opposite has occurred. For example, our district was forced to spend \$90,000 in legal and expert testimony alone to defend ourselves in a single hearing, in which we prevailed in all aspects. Preparation for and participation in lengthy hearings takes administration and staff away from their ongoing responsibilities to our more than 500 other special education students, not to mention the district's more than 4000 regular education students. Additionally, avoiding the cost of a full hearing and entertaining settlements has become part of the decision-making criteria about a child's program, rather than basing this decision solely on what the child actually needs. In this environment, where regulations have forced legal issues to be an overwhelming consideration, where are the state's safeguards for all of our other students, or for our taxpayers?

Boards of Education have an obligation to protect the interests of all the children in their district. Unprecedented budget constraints, due in part to escalating special education costs and legal fees, as well as other unfunded state mandates, are making it more and more difficult to fulfill that mission. Please help us by supporting compliance with an accepted national judicial standard, which ensures a fair process for all concerned.

Thank you for your consideration.

Sincerely,

Amy M. Bell
37 Fairfield Avenue
Darien, CT 06820

5425

Murphy, A

March 7, 2010

Dear Representative Fleischmann:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism.

But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Amy Murphy

A. Cancellieri

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee,

I am writing to object to the provision in Proposed Bill #HB 5425 that establishes that the burden of proof lies with the party requesting a special education hearing. The current law states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP). The current law reflects well-settled Connecticut policy. The current law makes good sense because the school districts are in control of the records, staff, the experts, and have unlimited access to all the information about the program they are providing. They can use their own staff as expert witnesses. Compare the schools to the parents, who often can't even understand the jargon used at the IEP meetings. This is a huge imbalance of power; the districts are in a far better position to defend the programs they deliver, as opposed to the parent to prove that the program is inappropriate. How would the proposed change affect parents who have children with disabilities in Connecticut? It stacks the deck more heavily in favor of school districts.

Historically, the majority of hearings reviewing the delivery of special education services to students with disabilities, our most vulnerable population, are already decided in favor of the school districts. This bill proposes a drastic 180 degree change of the burden of proof in special education due process cases. It would make due process hearings excessively costly and would be an insurmountable challenge for parents, creating a situation in which the families could not have a fair hearing with any reasonable chance of prevailing.

Thank you,

Ms. Andrea Cancellieri
16 Weaver St
Greenwich, CT
203-531-4819
andreac@realityworkwear.com

Section 3 of Raised Bill 5425 would eliminate critical parental rights and would ensure that thousands of Connecticut students with disabilities receive an inferior education.

Section 4 changes the financial responsibility of a student on an IEP who transfers between districts during the course of a school year from the receiving district to the sending district. This is a serious issue for school districts, made much more serious by the irresponsible cuts in excess cost reimbursement proposed in Governor Rell's budget and by the extremely limiting regulations on eligibility for excess cost reimbursement implemented by the State Department of Education a year ago. For most parents, whether the program is paid by the sending or by the receiving district is of no consequence. The reality is, however, that a district will only become seriously invested in a child's program if it is paying the bill. Keeping the financial responsibility with the district that designed the program but no longer has the student under its jurisdiction attenuates the responsibility of the district that has jurisdiction. Hence, although this change should not make an enormous difference to my clients, I oppose Section 4.

Thank you for your consideration of my views.

Respectfully Submitted,

Andrew A. Feinstein, Esq.
Andrew A. Feinstein Attorney at Law LLC
86 Denison Avenue
Mystic, Connecticut 06355
860-572-8585
feinsteinandrew@sbcglobal.net
attorneyfeinstein.com

A. Hannan

Anita Hannan
2 Winston Way
New Milford, CT 06776

March 4, 2010

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee,

I am in strong opposition to the Proposed Bill #HB 5425 that establishes that the burden of proof lies with the party requesting a special education hearing. The current law states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP). The current law reflects well-settled Connecticut policy. The current law makes good sense because the school districts are in control of the records, staff, the experts, and have unlimited access to all the information about the program they are providing. They can use their own staff as expert witnesses. Compare the schools to the parents, who often can't even understand the jargon used at the IEP meetings. This is a huge imbalance of power; the districts are in a far better position to defend the programs they deliver, as opposed to the parent to prove that the program is inappropriate. How would the proposed change affect parents who have children with disabilities in Connecticut? It stacks the deck more heavily in favor of school districts.

Historically, the majority of hearings reviewing the delivery of special education services to students with disabilities, our most vulnerable population, are already decided in favor of the school districts. This bill proposes a drastic 180 degree change of the burden of proof in special education due process cases. It would make due process hearings excessively costly and would be an insurmountable challenge for parents, creating a situation in which the families could not have a fair hearing with any reasonable chance of prevailing.

Thank you for your consideration in this matter,

Anita Hannan
203-559-6396
anita.hannan@oracle.com

A
Tohan

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee,
I am writing to object to the provision in Proposed Bill HB 5425 that establishes that the burden of proof lies with the party requesting a special education hearing.

The current law makes good sense because the school districts are in control of the records, staff, the experts, and have unlimited access to all the information about the program they are providing. They can use their own staff as expert witnesses. Compare the schools to the parents, who often can't even understand the jargon used at the IEP meetings. This is a huge imbalance of power; the districts are in a far better position to defend the programs they deliver, as opposed to the parent to prove that the program is inappropriate. How would the proposed change affect parents who have children with disabilities in Connecticut? It stacks the deck more heavily in favor of school districts.

Historically, the majority of hearings reviewing the delivery of special education services to students with disabilities, our most vulnerable population, are already decided in favor of the school districts.

This bill proposes a drastic 180 degree change of the burden of proof in special education due process cases. It would make due process hearings excessively costly and would be an insurmountable challenge for parents, creating a situation in which the families could not have a fair hearing with any reasonable chance of prevailing.

Thank you,
Anjuli Tohan
42 Brockton Court, Beacon Falls, CT 06403

Sullivan

5425

Mrs. Ann Sullivan
20 Steele Road
New Hartford, CT 06057-2612

March 6, 2010

Dear Representative Fleischmann:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism.

But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Ann Sullivan

5/25*Anonymous*

Professionally I am a speech/language pathologist. in my personal life i have a now adult son and an 11 year old grandson with significant learning disabilities. in the case of my grandson we have filed complaints and mediation and could have had a case for denial of FAPE against the school district for regularly not implementing the IEP they wrote. we do not have the means to hire an attorney, hence, we have not gone to due process, yet. even with my 25 years of background within school districts, it is difficult to gather the evidence to prevail in a complaint or mediation let alone a due process. I believe congress was terribly misguided in this provision and CT should stand up for students' rights in maintaining this provision. without it, IDEA becomes almost meaningless for students. it is often only the districts concern about the money they will have to spend that prevents more issues being decided on the convenience of pupil services staff rather than the needs of children.

Because of my professional position, i would rather you not use my name but you are welcome to include my comments with reference to my position.

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee,

I am writing to object to the provision in Proposed Bill #HB 5425 that establishes that the burden of proof lies with the party requesting a special education hearing.

I am a therapist who works with children and teens on the autism spectrum to help them learn social skills. Some of the families I have worked with for the past 11 years have had to hire both advocates and lawyers just to ensure that their children received the appropriate education that they are entitled to by law. So many of these families have had to mortgage their homes, borrow thousands of dollars from family members and go into deep debt to afford the high cost of their lawyers. In the end, all of them did receive the services their children were always entitled to but did not receive prior to bringing in legal counsel.

If this bill passes, I can't imagine how so many more families will be able to access costly legal services. If they can't, then their children will suffer by not receiving the education that high functioning autistic children need, which most public schools are falling short in providing until legal action gets taken. In addition, many of the special education attorneys in our area are so overwhelmed with so many cases that they don't have the time or staff to handle what is already coming their way. Passage of this bill will make it more difficult for parents to access this service, even if they could pay for it.

Historically, the majority of hearings reviewing the delivery of special education services to students with disabilities, our most vulnerable population, are already decided in favor of the school districts. This bill proposes a drastic 180 degree change of the burden of proof in special education due process cases. It would make due process hearings excessively costly and would be an insurmountable challenge for parents, creating a situation in which the families could not have a fair hearing with any reasonable chance of prevailing.

Please consider these issues when making your decision.

Thank you,
Barbara Cooper
898 Ethan Allen Highway
Ridgefield CT 06776
203-431-9150
bcooper@superkidsct.com-----

5425

Thorne, B

Legislators:

I am writing to urge your support for House Bill 5425. It seems reasonable to require the burden of proof in a dispute to reside with the party initiating the legal action.

Special Education due process should be consistent across state lines and in compliance with the US Supreme Court. This would help our town at a time when Darien's education budget is at risk.

Thank you.

Barbara L. Thorne

5425

000799
Dubb, B

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee,

I am writing to object to the provision in Proposed Bill #HB 5425 that establishes that the burden of proof lies with the party requesting a special education hearing. As a parent of a child with special needs I believe this bill will significantly impact kids with disabilities in our state in a very negative way. I believe this bill would make due process hearings excessively costly and would be an insurmountable challenge for parents, creating a situation in which the families could not have a fair hearing with any reasonable chance of prevailing.

The lives of the parents with special needs children are difficult in so many ways. We work, we hope, we pray for our actions to make a difference in our children's lives. We need to have faith that decency and the public trust will shape the decisions of our elected officials to pass laws intended to provide a fair and just playing field, especially true relative to the supporting role that education plays in shaping their very fragile lives.

Please remind yourselves that as elected officials, you are placed in your position as lawmakers by the people who voted for you to essentially represent their interests. However, in today's politics as a profession, the vocal minority, often slick and acting with an insiders roadmap, can out maneuver the most needy of the states constituents. The special needs students define that group.

As a parent of a special needs child, I will do everything in my power and energy to unveil the voting record for this bill. I will publish through every blog and email chain that I can, the spread the names of those who supported it. We the people, the parents of special needs children, will begin to vote as a block. And we will strike against those who oppose the very principles of justice. It is outrageous that the defenseless should need protection from those put in the position of responsibility to provide it.

Sincerely,

Benjamin Dubb
309 Towpath Lane
Cheshire, CT

5428

W. Glomb

Testimony of Walter L. Glomb, Jr.
to the Joint Committee on Education
March 8, 2010

Good afternoon. My name is Walter Glomb. I am a parent of a student who recently graduated from 18 years of special education in Connecticut. I am also the president of the Connecticut Coalition for Inclusive Education.

I am here today to voice my opposition to Raised House Bill Number 5425, AN ACT CONCERNING SPECIAL EDUCATION - specifically Section 3, which would establish that the burden of proof lies with the parents when they request a special education hearing.

Today you will hear from attorneys, advocates and other experts about the subtle legal, technical, ethical and moral issues that pertain to this bill. I am here to share with you the perspective of a parent who did request, and then endured, a special education hearing.

There was a time when my wife and I exercised our right to due process in order to insure that our son would receive a free and appropriate public education in the least restrictive environment. I can tell you first hand that this is not a simple project under our current state statutes and regulations.

The hearing process is costly – in both material and emotional terms. It places strains on the marriage, careers, siblings and family finances. The process may take weeks or months of preparation. The hearing may last for weeks or months. Compliance with the hearing decision may take years.

Parents who request a hearing will likely face a well-heeled law firm that specializes in opposing requests for supplementary aids and services in regular classrooms.

In some cases, families may need to appeal their hearing decisions to a federal court, where the trial may go for years – with additional costs and stresses.

In at least one case (P.J. et al v. State of Connecticut et al), where several families sought the same remedy in federal court, the process became a class action that is now approaching its twentieth year of litigation!

Altogether, Connecticut families are spending hundreds of thousands of dollars each year in these proceedings (not including the costs of the class action) to insure that their children receive a free and appropriate public education.

Parents do not exercise this right lightly. These are not frivolous actions.

If the federal courts choose to review the evidence presented in special education hearings with the burden of proof on the party requesting the hearing, then they can do so when a party appeals to the federal court. There is no need to add insult to injury with the proposed change to our state statutes.

Parents already carry an ample burden.

Please delete Section 3 from Raised House Bill Number 5425.

Thank you.

5425

Mrs. Wendy Qiu
75 West Norwalk Road
Norwalk, CT 06850-4402

March 6, 2010

Dear Representative Fleischmann:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism.

But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Wendy Qiu

5425

Wilton

March 7, 2010

Via E-Mail and U.S. Mail

Representative Peggy Reeves
 Legislative Office Building room 4020
 Hartford, CT 06106-1591
 PeggyReeves@cga.ct.gov

56 Hempelscamp Road
 Wilton, CT 06897

Senator Toni Boucher
 Senate Republican Office
 LOB Room 3400
 Hartford, CT 06106
 Fax: (860) 240-8306 or (860) 240-8308

5 Wicks End Lane
 Wilton, CT 06897

Dear Representative Reeves and Senator Boucher:

We are writing to you with regard to **Raised Bill No. 5425**. While the below signed are in support of sections 1 and 2 of this bill we are passionately against section 3.

We agree that this bill will ensure that our children receive behavior analysis from qualified professionals. The bill requires when a child in our public school system has behavior analysis as part of their individualized educational plan (IEP) that those services must be provided by someone who is licensed by the Department of Health or certified by the State Department of Education whose scope of practice includes behavior analysis or by a Board Certified Behavior Analyst (BCBA) or a Board Certified Assistant Behavior Analyst supervised by a BCBA. Currently those providing ABA services are only the paraprofessionals working with our children with special needs who do not have a minimum credential requirement.

Numerous studies have shown that behavior analysis is effective for children with Autism. The Connecticut Birth to Three Program has required proof of certification for behavior analysts that provides services to children in that program for years. Last year's insurance legislation recognizes a BCBA as someone qualified to provide these services.

It is important that school districts have clear direction from the State who meets the qualifications necessary to provide these services. Hiring people who are not qualified to provide these services put school districts at risk of parent lawsuits.

The BCBA is a recognized credential in many states. The Behavior Analyst Certification Board, Inc. (BCBA) is a nonprofit corporation which oversees this certification. The Behavior Analyst Certification Board's credentialing programs are accredited by the National Council for Certifying Agencies in Washington, D.C. This bill does not mandate or require ABA services, but simply insures that if a PPT deems these services appropriate than someone who has ABA training and is either licensed or certified is supervising this aspect of service delivery. This bill does not impact the ability of anyone else to collaborate on ABA programs, or to implement programs under their direction, i.e. paraprofessionals, parents, special education teachers, occupational therapists physical therapists or others.

We passionately disagree with section 3 of this bill. Currently, Connecticut law requires that school districts prove that they offer a child with disabilities an appropriate program if the dispute proceeds to a due process hearing. Section 3 of this bill proposes changing this law, and placing the burden of proof with the party who asked for the hearing, which in almost all cases is the parent.

Parents already face huge disadvantages in these matters as Special Education Administrators have constant ongoing access to free legal representation which parents must pay a huge out of pocket premium to receive. Most parents could never afford the same level of support that school administrators receive at taxpayer's expense and that is with the law left as it is now. Placing an additional burden of proof on parents would make prevailing in a due process hearing almost impossible to accomplish and greatly diminish the civil rights of a child with disabilities under the law.

Thank you for considering our opinions.

Respectfully Submitted,

Francesco and Maryann Lombardi
33 Honey Hill Trail
Wilton, CT 06897
(203) 544-9449

Robert and Gloria J. Bass
687 Danbury Road
Wilton, Ct 06897
(203) 544-8480

Jill and William C. Ely, Jr.
170 Sturges Ridge Road
Wilton, CT 06897
203 762-7016

Suzanna and Robert Sexton
237 Linden Tree Road
Wilton, CT 06897
(203) 761-8872

Theresa Clarke
45 Village Walk
Wilton, CT 06897
(203) 761-1344

James and Nancy Woods
2 Hollow Tree Place
Wilton, CT 06897

Patti Sylvia
27 Woodland Place
Wilton, CT 06897
(203) 761-0248

Ellen D'Ascenzo
127 Warnacke Road
Wilton, CT 06897
(203) 761-8726

Eve Kessler, Esq.
128 Musket Ridge Road
Wilton, CT 06897
(203) 761-0680

Jodi Meyer
37 Old Kings Highway
Wilton, CT 06897
(203) 761-0402

W. Marquis, W

5425

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee,

I am writing to object to the language in Proposed Bill #HB 5425. The language states that the purpose of the bill is "to establish that the burden of proof lies with the party requesting a special education hearing;" The current law states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP). The current law makes good sense because the school districts are in control of the records, staff, and the program. How would the proposed change affect parents who have children with disabilities in Connecticut? It stacks the deck more heavily in favor of school districts.

Historically, the majority of hearings reviewing the delivery of special education services to students with disabilities, our most vulnerable population, are already decided in favor of the school districts. This drastic 180 degree change of the burden of proof would make it excessively costly and almost impossible for parents of students receiving special education services to have a fair hearing with any reasonable chance of prevailing.

Thank you,

Willie Marquis

390 Farmington ave Waterbury, CT 06710

203-754-9174

madeleinemar@sbcglobal.net

Old Greenwich, CT 06870

Ms. Winona Zimmerman
2 Congress St
Hartford, CT 06114-1073

March 5, 2010

Dear Representative Fleischmann:

I ask that you please support HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism.

But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Winona Zimmerman

H. Shea

Dear Sir and/or Madam:

I would like to express my support for Raised House Bill #5425, which seeks to amend Section 3d, subdivision (1), subsection (d) of statute 10-76h of the general statutes. Specifically House Bill #5425 seeks to clarify that for issues in dispute between school districts and parents, the burden of proof rests with the party requesting the hearing.

Special Education is governed by Federal and State Law, the Federal IDEA and Connecticut Statute 10-76 which provide both students and their parents with many procedural safeguards, educational benefits and a clear forum to remedy a dispute between the school and parent. These safeguards include due process provisions where disputes can to be resolved via a series of steps, all the way to and including a hearing held before an impartial hearing officer. Connecticut is the only state that does not adhere to federal practices regarding the burden of proof in special education due process hearings. This difference has resulted in escalating costs for all boards of education in Connecticut cities and towns. Furthermore money gets needlessly directed into merit-less due process and settlements and away from children, both those with disabilities and those without disabilities.

I respectfully request you consider this amendment carefully.

Heather L. Shea
Darien Board of Education Member
21 Revere Road, Darien CT 06820

5425

000807
McCusker, H

Ms. Heather McCusker
33 Clayton Ave
Medford, MA 02155-6428

March 7, 2010

Dear Representative Fleischmann:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism.

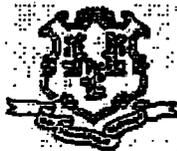
But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Heather McCusker

James McGaughey



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

Testimony of the Office of Protection and Advocacy for Persons with Disabilities
 Before
 The Education Committee

Submitted by: James D. McGaughey
 Executive Director
 March 8, 2010

Thank you for this opportunity to comment on Raised Bill No. 5425, AN ACT CONCERNING SPECIAL EDUCATION.

Our Office opposes the provisions of this bill that would create a statutory "burden of proof" for parties requesting due process hearings. That language, contained in Section 3, would overturn long-standing Connecticut regulations, and effectively foreclose the possibility of a fair appeal process for special education students and their families.

In almost all cases, "due process" is initiated by parents and guardians who are contesting significant issues regarding the way school systems have evaluated or are addressing their child's needs. In our Office's experience, parents do not happily initiate those requests - requests that usually come only after a lengthy series of disappointing, frustrating interactions with school administrators. When they feel they must request a due process hearing, these parents experience all the angst inherent in "fighting city hall". They face considerable expense, stress and uncertainty, and know they risk alienating administrators who will continue to hold power over their child's future educational experiences.

"Due Process" was originally envisioned as a speedy, impartial, low cost way to resolve disputes and level the playing field between individual families and powerful school systems. In recent years, however, changes in both the federal and state special education law have made the path to due process more difficult for parents to navigate. It is unfair to now require them to bear the additional burden of proving that the district's evaluations, plans, staff assignments, educational practices or other aspects of their child's program are inadequate. Parents do not typically have access to the information and expertise necessary to meet this evidentiary burden without conducting extensive discovery, hiring their own expert evaluators and paying substantial attorney fees. Placing this burden on them can only increase costs, delay decisions and, ultimately, deny many of them their day in court. Districts have far better access to information about their own practices and programs than do parents.

I realize that a 2005 U.S. Supreme Court decision (Schaffer v. Weast) seems to allow the "burden of proof" to be placed on the party that initiates due process under the federal IDEA. However, the Schaffer decision does not require that states adopt this approach. Schaffer involved a due process decision from Maryland - a state where there was no statutory or regulatory direction to administrative hearing officers regarding which party bears the burden of proof in a due process

Testimony of James McGaughey
Before the Education Committee
Page 2 of 2
March 8, 2010

hearing. In contrast, Connecticut special education regulations contain explicit direction:

The party who filed for due process has the burden of going forward with the evidence. In all cases, however, the public agency has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency. This burden shall be met by a preponderance of the evidence, except for hearings conducted pursuant to 34 CFR Section 300.521. (Conn. Regulations. Sec. 10-76h-11)

The Schaffer Court explicitly declined to extend the effect of its decision to states that have adopted their own rules regarding burden of proof. (The Court also made it clear that its decision was limited to the "burden of persuasion", not the "burden of production of evidence".)

In short, the law in Connecticut is well settled and fairly allocates the evidentiary burdens in due process. We are not required to overturn our current rules in response to the Schaffer v. Weast decision. In the name of fairness, I urge you to reject Section 3 of this bill.

If there are any questions regarding our Office's position on this proposal, please feel free to contact me.

5421

Ross, J

March 8, 2010

Dear Senator Gaffey, Representative Fleischmann, and Members of the Education Committee,

I am requesting that you accept this letter from Smart Kids with Learning Disabilities, Inc., a nonprofit organization based in Westport, Connecticut whose members include parents of children with learning disabilities, attention deficit disorders and other learning challenges, in opposition to the Proposed Bill #HB 5425, establishing that the burden of proof lies with the party requesting a special education hearing.

The current law states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP). It reflects well-settled Connecticut policy, and makes good sense because the school districts are in control of the records, staff, and the experts, and have unlimited access to all the information about the program they are providing. They can use their own staff as expert witnesses.

Unlike school personnel, parents often can't understand the jargon used at the IEP meetings. This is a huge imbalance of power; the districts are in a far better position to defend the programs they deliver, as opposed to the parent having to prove that the program is inappropriate. How would the proposed change affect parents who have children with disabilities in Connecticut? It stacks the deck more heavily in favor of school districts.

Historically, the majority of hearings reviewing the delivery of special education services to students with disabilities, our most vulnerable population, are already decided in favor of the school districts. This bill proposes a drastic 180-degree change of the burden of proof in special education due process cases. It would make due process hearings excessively costly and would be an insurmountable challenge for parents, creating a situation in which the families could not have a fair hearing with any reasonable chance of prevailing.

Thank you for your consideration.

Jane Ross
Executive Director
Smart Kids with Learning Disabilities
38 Kings Highway North
Westport, CT
Phone (203) 226-6831
Info@SmartKidswithLD.or

Testimony by Maria Dominici

My name is Maria Dominici and I reside in Weston, CT. My daughter, Jaya Dominici, is autistic and eight years old. Prior to her admittance to CCCD in Milford, CT, she attended the Weston Public School System.

Jaya's Behavior Analyst was Stacy Lore, while Jaya was still in the Weston Public School system. Stacy worked with my daughter for 18 months, from age 3 1/2 to 5 years. I believe Ms. Lore worked with my daughter longer than any other child in the state of CT. I believe my daughter was also the first child in CT that Ms. Lore worked with.

As everyone is aware, Ms. Stacy Lore is NOT a licensed, certified BCBA. She lied about all of her certifications. She was NEVER qualified to work with my daughter or any child on the spectrum or otherwise. I will never be certain of the progress my daughter could have made had she been under the care and supervision of a certified BCBA.

Ms. Lore had my daughter sit in a Rifkin chair, each day at school, unable to move so she (Ms. Lore) could "attend" to her. Ms. Lore, clearly did not know how to teach my daughter without that barbaric chair. My daughter is non-verbal and was unable to tell me that her "teacher" was holding her hostage in a chair that she was strapped to. To this date, my daughter is still non-verbal and I may never know what that felt like for her.

It's imperative and absolutely necessary that the BCBA's that work with our disabled children are qualified to do so. This is not a negotiable issue. They MUST be qualified just as a physician MUST be qualified to perform surgery. Parents of these special children will not tolerate anything less!!

With regard to full house bill 5424. I support section 2 and OPPOSE section 3.

HB5425

Many thanks for your time.

Most Sincerely,

Maria Dominici
Weston, CT

5425

J. Robinson



NEWTOWN PUBLIC SCHOOLS

**3 Primrose Street
Newtown, CT 06470**

OFFICE OF THE SUPERINTENDENT
(203) 426-7620
FAX (203) 270-6199

BUSINESS OFFICE
(203) 426-7618
FAX (203) 270-6110

March 8, 2010

Education Committee of the Connecticut General Assembly
Room 3100, Legislative Office Building
Hartford, CT 06106

Re: RB 5425

Dear Education Committee Member:

I am Janet Robinson, Superintendent for the Newtown Public Schools. Please accept this letter as testimony of my support for Raised Bill No. 5425. I would like to express my support for one section here. Specifically, I am in support of Section 3 of the bill, which makes a critical change to place the burden of proof on the party requesting the hearing in a special education due process hearing. This change would bring Connecticut in line with the language of the federal Individuals with Disabilities Education Act (IDEA) and with the decision of the United States Supreme Court in the case of Schaffer v. Weast, 546 U.S. 49 (2005). Placing the burden of proof on the party requesting the hearing is consistent with the fundamental principles of the American judicial system, which imposes the burden of proof on the plaintiff in almost every civil action. Simply put, if you sue a business or an individual in a tort claim, a products liability claim, or almost any other type of action, you as the plaintiff bear the burden of proving your allegations against that company or individual, regardless of any perceived inequity in the resources of the company or individual against whom you have brought your claim. As pointed out by the United States Supreme Court, in the absence of some compelling reason to the contrary, the same burden of proof can and should apply to plaintiffs in special education due process hearings. In fact, in most states, the plaintiff in the case, usually the parent, does bear the burden of proof, and this has not caused any major problems for parents in enforcing their rights under IDEA in those states where this is the rule.

While it is understood that some have expressed that placing the burden of proof on the plaintiff in a due process hearing is unfair because the school district has access to the information needed by the parent to pursue his or her claim, I must point out that this same argument was made to the United States Supreme Court and was rejected by a

majority of the Court. The argument was rejected precisely because of the number of procedural safeguards contained within the IDEA that level the playing field for parents. Parents have the right to review all educational records concerning their child, and the school district may not discard or destroy educational records without notification to the parents. Parents have the right to request an independent educational evaluation at the expense of the school district, and the school district must provide an outside independent expert to evaluate the child and provide an opinion that may potentially contradict the previous recommendations of the school district for that child. In Connecticut, given the array of expertise available to parents in the form of outside expert opinion, it is particularly likely that the parent will be able to force the school district to fund an outside expert opinion that contradicts opinions previously presented by the school district. When a hearing is requested, school districts must answer the charges made by the parents in writing, and must disclose to the parents all evaluations and information that the district intends to rely upon at the hearing, giving the parent access to all of the school district's information. These protections, according to the United States Supreme Court, ensure that the school district has no informational advantage over the parents and also ensures that the parent has access to expert witness testimony at the expense of the school district.

The Supreme Court also pointed out, not insignificantly, that placing the burden of proof on the school district to prove that the program offered to the student is appropriate has the effect of presuming that the program is inappropriate unless and until the school district proves otherwise. This runs completely contrary to the structure and intent of the IDEA itself. The function of the IDEA is to provide funding to states to provide appropriate special education programming to students with disabilities, and it does this by funding special education teachers, related service providers, and qualified administrative personnel who have the ability and the expertise to provide special education programming. We should not start out each query by assuming that school personnel, who work so hard for our district and our children every day, have not done a good job or fulfilled their responsibilities. It not only sends the wrong message to the school personnel and to the parents of children with special needs, it is also counterproductive in the hearing process.

As noted by the Supreme Court, placing the burden of proof on the school district has the effect of making an already expensive litigation process all the more expensive by requiring districts to prove issues on which the parents have made only the barest allegations. Driving up the cost of dispute resolution runs counter to the spirit and intent of the law, which contains multiple provisions for resolving disputes quickly and without burden and expense, such as through mediation or resolution meetings occurring prior to the start of the due process hearing. Although a nationwide study has reported the average due process hearing cost at \$8,000-\$12,000, it has been our experience in Newtown that the cost of litigating a full due process hearing has at times exceeded \$30,000. In conversations with other superintendents, it appears that our hearings in Connecticut are longer and more costly in this state as compared to other states where the burden of proof is on the plaintiff, and there is no evidence to suggest that these lengthy and costly due process hearings do anything to improve outcomes for disabled children.

There is evidence to suggest that the longer the hearing, the more the plaintiff's counsel benefits from the collection of attorney's fees, either from the parents of children with disabilities or from the school district if the parent prevails and collects attorney's fees from the school district. In cases where the school district loses a due process hearing to the parent and must pay prevailing party attorney's fees, the total cost to the district can be close to \$100,000 independent of any costs associated with providing programming to the child such as tuition. Parent attorneys exploit this fact by encouraging parents to unilaterally place children in private schools and then demanding settlement payments equal to the district's cost of proceeding to a hearing, knowing that the school district will often pay such a demand to avoid a lengthy and costly battle with an uncertain outcome. This only contributes to the public perception that special education is becoming a sort of voucher system for paying for private school tuition for those who know how to exploit the system.

I urge you to stand firm on the provision returning the burden of proof to the plaintiff in the due process hearing in the face of what we know will be opposition from parent advocates, and send the message to our schools that the legislature believes that school personnel do have the expertise to be able to provide excellent programs for children with and without disabilities. Schools will repay this confidence by putting the money that would have been spent on needless litigation into providing programming for children and raising expectations, which will improve outcomes for children with disabilities.

Thank you for your consideration. I am available to answer questions or provide additional information upon request.

Sincerely,

Janet Robinson, Ph.D.
Superintendent of Schools
Newtown Public Schools

J
Knoth

Mrs. Jennifer Knoth
32 Dewey Avenue
Milford, CT 06460-5410

March 5, 2010

Dear Representative Fleischmann:

I ask that you please support HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism.

But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Jennifer Knoth

8421

Robinson, J

CASP

CONNECTICUT ASSOCIATION OF SCHOOL PSYCHOLOGISTS

AFFILIATED WITH THE
NATIONAL ASSOCIATION OF
SCHOOL PSYCHOLOGISTS

Written Testimony of

Jennifer Mitchell Robinson, M.S. Ed, NCSP
Certified School Psychologist

Legislative Committee Chair, Connecticut Association of School Psychologists

March 8, 2010

Education Committee

Good afternoon, Senator Gaffey, Representative Fleischmann and the distinguished members of the Education Committee my name is Jennifer Mitchell Robinson and I am submitting the following testimony on behalf of the Connecticut Association of School Psychologists (CASP).

CASP supports Section 2 of HB 5425, in regards to the provision of applied behavioral analysis services for students on the autism spectrum. However we support the recommendation in the Attorney General's report dated January 13, 2010, that these services should not be limited solely to students on the autism spectrum, but any student receiving behavior analyst supports are recommended through their Individualized Education Plan (IEP). Behavioral analyst services provide support to students who experience difficulties in the school environment and are important factors when planning their Individualized Education Plan or 504 Plan. It is important to note, that these services should only be provided by individuals qualified to do so. Under current law, there are many personnel already employed by school systems that have the training and qualifications to provide such services, including, but not limited to, school psychologists, school social workers, and speech and language pathologists.

However, as the bill is currently written, CASP has concerns regarding how subsection (b) is written. It states that:

"the Commissioner of Education may authorize the provisions of such services by persons who: (1) Hold a bachelor's degree in a related field; (2) have completed (A) a minimum of nine credit hours of coursework from a course sequence approved by the Behavior Analyst Certification Board or (B) coursework that meets the eligibility requirement to sit for the board certified behavior analyst examination and (3) are supervised by a board certified behavior analyst."

Nothing in this subsection requires the "person" to have experience working in a school setting, which is just as important as having the appropriate job qualifications. As reported in section I, subsection E, the Attorney General's office recommends "that any licensure or certification requirement specifically state that local school districts need to review the credentials of behavior analysts to ensure that each analyst is appropriate for the particular intervention recommended in the Individualized Education Plan." CASP strongly recommends that anyone working with students in a school should have experience working in a school environment.

Therefore, CASP would urge the members of the Education Committee to amend subsection (b) to require that they receive the necessary training to work in the school setting. It will further protect the students of Connecticut who receive these services.

5425

Phillips

Ms. Jennifer Phillips
92 Church St. FL 3
Branford, CT 06405-3832

March 5, 2010

Dear Representative Fleischmann:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism. But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Jennifer Phillips

SY25

Smith, J

Mrs. Jennifer Smith
27-4 Revere Drive
Bloomfield, CT 06002-5608

March 5, 2010

Dear Representative Fleischmann:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism. But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Jennifer Smith

J. Volpe

Mrs. Jennifer Volpe
18 Apple Hill Drive
Prospect, CT 06712-1601

March 5, 2010

Dear Representative Fleischmann:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism.

But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Jennifer Volpe

5425

Belair, J

Dear Education Committee Members,

As Superintendent of Schools in Weston I support House Bill #5425 which seeks to amend Section 3d, subdivision (1), subsection (d) of statute 10-76h of the general statutes. In state after state, across the U.S., the standard exists whereby the burden of proof defaults to the party requesting the hearing. However, this is not the case in CT, where the State Department of Education Regulation does not require the party requesting the hearing to bear the burden of proof. This regulation has set up a system where parents and their attorneys can, in effect, claim: "School District, I charge you with my claim of educational malfeasance against my child. Now, prove yourself innocent." Here in Weston, we have experienced costs for long hearings that have lasted as long as 2 weeks. The costs are exorbitant, sometimes well over \$50,000. Rather than absorb this cost, we have chosen to pay a settlement of \$25,000 for outplacement when we feel we could provide the educational services within the district. It has become very easy for parents to make accusations against the Weston Public Schools that then forces the district to prove its innocence, instead of requiring the accusing party to bear the burden of proof.

I urge the Education Committee Members to remedy this situation and reporting favorably to enact Raised House Bill #5425. The burden of proof ought to lie with the party initiating a legal action.

Sincerely,

Jerome R. Belair, Superintendent
Weston Public Schools
24 School Road
Weston, CT 06883

5425

Rothman

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee,

I am writing to express our deep concern with the provision in Proposed Bill #HB 5425 that establishes that the burden of proof lies with the party requesting a special education hearing. The current law states that the burden of proof is the responsibility of the school district to prove it has provided a Free, Appropriate, Public Education (FAPE) through the Individual Education Plan (IEP). The current law reflects well-settled Connecticut policy. The current law makes good sense because the school districts are in control of the records, staff, the experts, and have unlimited access to all the information about the program they are providing. Our older son has special needs, and is enrolled in a public school in Connecticut. It is sometimes difficult to raise concerns we have about certain aspects of our son's education with the school district.. This proposed legislation would potentially put one more barrier in our path in our effort to provide the best possible future for our son.

We respectfully request that this bill not be allowed to advance in the legislative process.

Sincerely,

Jerry and Sheila Rothman

14 Harold Avenue #4

Greenwich, CT 06830

Jerry Rothman

sheilaz914@earthlink.net

EarthLink Revolves Around You.

5425Brown, J
5/4/25

TESTIMONY

My name is Jessica Brown and I am a Special Education Teacher for students with autism in the West Haven School District. I have been working with Board Certified Behavior Analysts for the past year. Their expertise has made a remarkable impact on classroom management as well as student skill acquisition. I have collaborated with another outside agency whose consultant was not a board certified behavior analyst or an assistant board certified behavior analyst. They were not able to produce similar results. Providing effective intervention to students on the autism spectrum can be a daunting task. More and more students are entering our schools who require intense behavioral intervention whose IEP's mandate ABA therapy. I am currently completing online course work to become a BCBA and am being supervised by a BCBA. Most teachers and paraprofessionals get little to no training. It is essential that school districts utilize qualified and certified professionals to deliver ABA services so that teachers, support staff, and students can work in a successful and positive classroom atmosphere.

Jessica Brown
20 Burma Road
Woodbridge, CT. 06525

5425

McNulty, J



CONNECTICUT SPEECH-LANGUAGE-HEARING ASSOC. INC.
213 BACK LANE
NEWINGTON, CT 06111-4204
(860)666-6900 Fax (860)667-0144

e-mail (csha.assoc@snet.net) web address (www.ctspeechhearing.org)

3/7/2010

Good Afternoon Mr. Gaffey, Mr. Fleischmann and members of the Education Committee. My name is Joan McNulty and I am a member of the CT Speech Language and Hearing Association. (CSHA). I am writing regarding H.B. 5425, An Act Concerning Special Education.

I am concerned about changes proposed to reconstitute the State Advisory Council on Special Education, which is detailed in Section 1 (a).

Under the current language, CSHA is recognized as a standing member of the CT State Advisory Council for Special Education. The current legislation proposes to reduce from three members to one member the appointments made by the President Pro Tem of the Senate and removes explicit recognition of a CSHA representative on the Council.

While I appreciate the effort of the Education Committee to reduce the number of members on this council, it is imperative that a representative of CSHA continue to be a participating member of the Advisory Council for Special Education given our role in the special education process. The speech/language pathologist is an integral and mandated member of the special education team contributing to evaluations and the implementation of programs. A special education team counts on input from all members to serve the needs of our communities. It is appropriate therefore, that a CSHA continue to be a member of the CT State Advisory Council for Special Education.

Thank you for allowing me to share my position on HB 5425 which advocates for the continued membership of a CSHA representative on the State Advisory Council for Special Education.

Sincerely,

Joan McNulty, M.S, CCC-S
 Speech/Language Pathologist
 West Hartford, CT

5425

Marquis J 000824

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee,

Please help!

I am writing to object to the language in Proposed Bill #HB 5425. The language states that the purpose of the bill is "to establish that the burden of proof lies with the party requesting a special education hearing;" The current law states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP). The current law makes good sense because the school districts are in control of the records, staff, and the program. How would the proposed change affect parents who have children with disabilities in Connecticut? It stacks the deck more heavily in favor of school districts.

Historically, the majority of hearings reviewing the delivery of special education services to students with disabilities, our most vulnerable population, are already decided in favor of the school districts. This drastic 180 degree change of the burden of proof would make it excessively costly and almost impossible for parents of students receiving special education services to have a fair hearing with any reasonable chance of prevailing.

It could be devastating to students with disabilities whose parents do not have the financial resources to defend their child's rights against the school system. We have to ensure that each child can reach their fullest potential.

Thank you,
Joanne Marquis
48 Tree Hill Road
Waterbury, CT 06708
203-376-5865

5465

McGovern, J

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee,

I am writing to object to the provision in Proposed Bill #HB 5425 that establishes that the burden of proof lies with the party requesting a special education hearing. The current law states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP). The current law reflects well-settled Connecticut policy. The current law makes good sense because the school districts are in control of the records, staff, the experts, and have unlimited access to all the information about the program they are providing. They can use their own staff as expert witnesses. Compare the schools to the parents, who often can't even understand the jargon used at the IEP meetings. This is a huge imbalance of power; the districts are in a far better position to defend the programs they deliver, as opposed to the parent to prove that the program is inappropriate. How would the proposed change affect parents who have children with disabilities in Connecticut? It stacks the deck more heavily in favor of school districts.

Historically, the majority of hearings reviewing the delivery of special education services to students with disabilities, our most vulnerable population, are already decided in favor of the school districts. This bill proposes a drastic 180 degree change of the burden of proof in special education due process cases. It would make due process hearings excessively costly and would be an insurmountable challenge for parents, creating a situation in which the families could not have a fair hearing with any reasonable chance of prevailing.

Thank you,

Mr. John Michael McGovern, Ms. Leah Thornton

20 Fairfield Road #2S

Greenwich, CT

203-485-9621

leah.thornton@gmail.com

jmngovern3@gmail.com

8425

Orr, J 000826

Mrs. Joy Orr
44 Laurel Rd
Essex, CT 06426-1014

March 5, 2010

Dear Representative Fleischmann:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism.

But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Joy Orr

5425

Anders, J

**Testimony of
SPED*NET, Special Education Network of New Canaan, Ltd.
PO Box 1610
New Canaan, CT 06840
To the Education Committee, Public Hearing
March 8, 2010**

Please accept this written testimony for our support to H.B. No. 5425,
Section 2, and our opposition to H.B. No. 5425, Section 3.

AN ACT CONCERNING SPECIAL EDUCATION

As the independent voice for students receiving special education services in New Canaan, CT for over 12 years, we are going on record to support Section 2, and oppose section 3 of raised House Bill No. 5425.

Section 2: We support the requirement that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Many of the students we represent are on the autism spectrum. They need trained staff to implement the principles of behavior analysis (the scientific study of behavior). Behavior Analysis emphasizes careful measurement of observed behavior, along with an appreciation of the role of environment just before and just after the response. Prediction and control of behavior is critical to understanding and educating our students with autism, and behavior analysis offers the tools to accomplish this. Please, give us trained school staff to work with our students with autism.

Section 3: Connecticut must keep the burden of proof on the School District!

Connecticut Attorney General Richard Blumenthal stated that CT must continue to keep the burden of proof on the school district. He said "We believe that our regulation embodies a valid state policy that articulates our belief that school boards are in a better position to muster the facts and expertise in any contest with ordinary parents." (Quoted in the New York Times on November 17, 2005). Honestly, it is already difficult, almost impossible, for our parents to bring the districts to Due Process when our children are not receiving appropriate programs. Shifting the Burden of Proof to the parents and away from the schools will pretty much destroy any opportunity for families to look to due process as a remedy.

Thank you in advance for considering our point of view.

Respectfully yours,

Judi Anders, President
Denise Buckenheimer, Vice President
Beth Lurie, Treasurer & former President
Board Members: Meghan Cioffi, Wendy Davis, Heather Devitt, Becky Duplock,
Laurie Gupta, Victoria Muñoz, and Virginia Tierney.
Executive Director Anne Eason

*SPED*NET, Special Education Network of New Canaan, Ltd. is organized exclusively to educate the public on special education and disability-related issues and empower parents, professionals, and students to become more effective advocates in their schools and communities, particularly in New Canaan, CT, and it's neighboring towns. SPED*NET serves as a resource for disability-related information, and as a parent-to-parent support and advocacy network for families of children with individual education plans (IEP's) and Section 504 plans. For more information, check www.spednet.org.*



8425

Kuch

CCM



900 Chapel St., 9th Floor, New Haven, Connecticut 06510-2807
 Phone (203) 488-3000 • Fax (203) 562-6314 • www.ccm-ct.org

THE VOICE OF LOCAL GOVERNMENT

TESTIMONY
 of the
CONNECTICUT CONFERENCE OF MUNICIPALITIES
 to the
EDUCATION COMMITTEE

March 8, 2010

CCM is Connecticut's statewide association of towns and cities and the voice of local government - your partners in governing Connecticut. Our members represent over 93% of Connecticut's population. We appreciate this opportunity to provide testimony to you on issues of concern to towns and cities.

Raised House Bill 5425 "An Act Concerning Special Education"

Special Education is the single largest cost accelerant of education spending in Connecticut. It is estimated that special education costs grow 5%-6% per year, 1%-2% faster than most other education costs. How, and at what level, the State reimburses municipalities for these mandated costs is one of the hottest state-local issues - and the State has been falling behind.

With special education expenditures now topping the \$1.5 billion mark, the local share may now reach \$1 billion. Special education spending accounts for at least 14% of all education spending in Connecticut and costs keep growing faster than other school spending (5%-6% vs. 3%-4%). Complicating matters, unforeseen demands for the most expensive special education services too often result in local mid-year budget shuffling, supplementary appropriations, and other extraordinary measures. This is particularly true in smaller towns where the arrival of a single new high-cost special education student during the school year can create a budget crisis.

At present the Special Education Excess Cost Grant is not fully funded. Last year state funding for the program was cut by over \$13 million. While federal IDEA money was said to make up the difference, the method of distribution of the federal funding is not the same as where the State's reimbursements would go. Some towns received less than they should have. Next year's budget provides level-funding - \$120 million - for reimbursements, but the Department of Education expects applications for reimbursement to be over \$140 million - therefore the amount appropriated for reimbursements is already over \$20 million below where it should be.

CCM supports Section 3 of this bill which would align the "Burden of Proof" requirement in Connecticut with the federal government by placing the onus on the party requesting the hearing.

CCM opposes Section 2 of this bill which would create a new unfunded mandate on local governments by requiring behavior analyses and certain services for students with autism spectrum disorder. In addition, the bill specifies the qualifications of the individuals who would be administering the analysis and services.

-Page 2-

CCM opposes Section 4 of this bill require boards of education to continue to pay for special education costs for students that have moved out of their districts. We understand the intent of this section – that some districts are financially penalized for having good programs because families move to those communities and they must now absorb the costs associated with the children.

But this proposal is not the way to address the problem. It would place the cost onto the student's previous town – but if the family no longer lives there, there is no nexus, no reason, to assess that municipality for the costs. People move for all sorts of reasons, reasons that may have nothing to do with their having a special education student. The long-term solution for this problem is for the State to take over the costs and administration of special education, perhaps delivering services through the RESCs – to ensure that the same levels of services are available in all towns. In the meantime, a starting point would be for the State to live up to its current obligations and fully fund the Excess Cost program.

Towns and cities have recently suffered a \$100 million cut in state aid in this biennium; the State is currently grappling with a \$500-\$700 million current year deficit; and, upwards of \$3 billion deficits faces us in the out years. In addition, as local costs rise ECS is expected to be "level-funded" with FY 08-09, and only due to federal ARRA funding.

This is not the time for the State to be increasing costs for any local education program, including special education.

The State is falling short on reimbursement commitments it has already made. It should not even consider imposition of new mandates until it has fulfilled those promises.

CCM urges the committee to **delete Section 2 and Section 4** before taking any action.

##

If you have any questions, please contact Kachina Walsh-Weaver, Senior Legislative Associate of CCM via email kweaver@ccm-ct.org or via phone (203) 498-3026.

S425

Pilkingtn, K

To Members of the Committee:

Please do not allow the burden of proof to be shifted from the school to the party requesting due process. How could parents (typically the ones requesting the hearing) possibly prove that the school was not in compliance with the IEP? The proposal would allow the fox to guard the hen-house.

School professionals should be able and willing to provide evidence that they are following the IEP, and, if they are following the letter and spirit of the law, should have no fear regarding offering such proof.

The proposed changes will create a situation where our most vulnerable students will be even more at risk. Please do not let this happen.

Thank You in Advance,
Karen and William Pilkington
Parents of a Special Education student

5425
Ku
Massey, K

To Whom It May Concern:

Please vote against changing the burden of proof to the party requesting a due process hearing as embedded in Raised Bill 5425 Section 3 (d) (1). In most cases of due process, the party requesting a hearing is the parents. Parents will be asked to provide information that is only readily available to the administrators, guidance counselors, school psychologists and teachers. I believe if passed, this will significantly impact children with special needs in a very negative way. It also serves to turn the foundation of IDEA on its head.

School administrators are not there to help children. School Administrators are there to follow the direction of the Board of Education of which the main focus is to keep costs at a minimum. You, as the Education Committee, are making a mockery of the process by looking to change the burden of proof requirements. If indeed your job is to do what is best to benefit all children, let me repeat that - ALL CHILDREN - then you are not doing your job if the due process change is allowed to become part of an already difficult and emotional process.

The failure of the Board of Education and their administrators to provide a safe, secure school environment, as well as a Free Appropriate Public Education (FAPE) for my daughter has left us nearly broke. After nearly 3 years of pleading and begging and yelling at the administrators and teachers, we finally placed and paid for our daughter to attend private residential programs, from which she graduated high school six months ahead of her peers. She is now pursuing her own dreams and will be attending college in the fall. I am glad we had the ability to afford the price tag associated with the school; most can't without the financial assistance that should have been provided by the Board of Education.

IEP's can go on forever. They can be dragged on and on, being continued for another week, another month, let's wait and see, until finally the only recourse is to file for a due process hearing. In many cases, parents are not even aware of their rights, and no one from the budget conscious administration reaches out to assist parents. The pamphlets and information provided to parents in the handbooks is sadly lacking a coherent description of what services are available, what processes can be used to address child specific issues. In some cases, school handbooks only give a number to call to ask for information! Nowhere in the handbook I was given for the past 4 years was FAPE, IDEA or IEP even mentioned. It is only when you find an organization such as CPAC do you realize how little information parents are privy to, and how little the flow of information is from administrators to parents.

By asking the parents and guardians to prove the negative, you are merely giving into the special interest groups. You were not elected to cater to some. You were elected to cater to all, and special needs children are part of the all.

It is not the parents who have the information to prove the negative- that the school is not providing a free appropriate public education. The administration has all of the information; the grades, the evaluations, the information from teachers not written down. Sadly, unless parents know all the right words to use, all the right questions to ask and to whom to ask the right questions, they will never get all the information to which they are entitled and would need at a due process hearing; the end result being the child loses every time. It is also, as we all know, very difficult to prove a negative. It is much more reasonable to assume that if a due process hearing is requested, the onus should fall on the education system to prove that indeed they are providing FAPE; it is the burden of the school system to provide the services needed so logically, the burden of proof should rest on their shoulders to prove they have provided what by law is necessary.

Administrators administrate. They are not child advocates. They are budget watchers. They are there to use the laws to their advantage and to try to change the laws to their advantage so they can point to the law and say, 'I'd love to help, but there's nothing I can do...' a phrase heard so many times by this mother, the words will haunt me to my grave.

We have suffered enough. We will continue to suffer, to hope, to agonize and to pray that our children can make it through. That they can succeed in the very ugly world of educational politics. We all need to be assured that the schools and administrators will be by our children's side trying to help, not wriggling through the loopholes they find in laws, and lobbying for changes that make it easier for them to throw our kids to the wolves.

I have posted this information to alert other parents of children in Connecticut to the potential negative effects this change will have on students. I will continue to keep them informed of the outcome, which I hope, is the correct outcome and the burden of proof will NOT move to the parents.

Please do the right thing and vote against the requested changes for due process. We are all watching.

Sincerely,

Karen Massey

5425

Kus

000833
Zbierski, K

Testimony in Opposition to Raised HB 5425 Section 3

Dear Sen. Gaffey, Rep. Fleischmann and Members of the Education Committee,

I am a parent of a child receiving special education services as part of their education in our public school district.

I am writing in opposition to changes in H.B. 5425 "AN ACT CONCERNING SPECIAL EDUCATION" Section 3 changing the burden of proof to the party requesting the hearing. I happen to be lucky and have had very good success working with our school district and not had to use Due Process to resolve any discrepancies but many parents in our state need to rely on Due Process for their children to get the services they need in the setting they believe is appropriate for their child to succeed academically and socially. Shifting the burden of proof to the one who requests the hearing puts the parents at an even greater disadvantage. The parents do not have the years of experience the school districts have. The parents cannot retain some of Connecticut's finest lawyers and often represent themselves in these situations. The parents do not have the training nor has the experience the school district. The parents would not have a fair hearing with any reasonable chance of prevailing.

If school districts no longer had the burden of proof, they'd have no motivation to make sure everything is done properly. This change to this law stacks the deck more against the parents that need the system the most. Parents of children in special education don't need the added weight of having to hire a good lawyer just to get their children a proper education.

I strongly oppose this change.

Thank you for your time and consideration

Karen Zbierski

East Haddam, CT

5425

000834
Primavera, K

Ka

Dear Senator Gaffey, Representative Fleischmann and esteemed members of the Education Committee,

My name is Karina Primavera, and I would like to voice my strong opposition to Section 3 of Raised House Bill #5425, which shifts the burden of proof at special education due process hearings to the party requesting the hearing.

As a parent of two children with Special Needs, I am deeply concerned about the potential injustices that Section 3 could create against families trying to gain access to the services they deserve. I hope that I am never in a situation where I would need to initiate due process with my school district, but if the need should arise I want to be assured that the process is a fair one. School districts are inherently at an unfair advantage in that they have ultimate control over the entire process, from the staff members to all the testing and other information upon which decisions are made. Districts also have virtually unlimited access to experts and high-powered legal representation – all at taxpayer expense.

Placing the burden of proof on the party requesting the special education hearing would only exacerbate this imbalance of power, as in most instances it is the parents who are making the request; districts typically have no reason to initiate due process since they have ultimate control over service delivery and can simply withhold services. Due process hearings would become even more costly, accessible only to the most wealthy, and also unfair – ultimately depriving students of their right to an appropriate education.

Unless you are a parent of a child with significant special needs, there is no way to know the pressures we feel every single day regarding our children's educational programs. For students like my sons, receiving an appropriate education will likely make the difference between her living a maximally independent, productive life and being dependent on state- and federally-funded services. Although it would in no way level the playing field in due process hearings, please at least give families a more equitable opportunity to exert their due process rights. Please delete Section 3 from Raised House Bill Number 5425.

Thank you very much for your consideration.

Regards,
Karina Primavera.

5425

K

Drost

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee,

Hello. Our names are Keith Drost and Cynthia Drost. We are the proud parents of a teenager who happens to have intellectual disabilities.

We are writing to object to the language in Proposed Bill #HB 5425. The language states that the purpose of the bill is "to establish that the burden of proof lies with the party requesting a special education hearing;" The current law states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP). The current law makes good sense because the school districts are in control of the records, staff, and the program. How would the proposed change affect parents who have children with disabilities in Connecticut? It stacks the deck more heavily in favor of school districts.

Historically, the majority of hearings reviewing the delivery of special education services to students with disabilities, our most vulnerable population, are already decided in favor of the school districts. This drastic 180 degree change of the burden of proof would make it excessively costly and almost impossible for parents of students receiving special education services to have a fair hearing with any reasonable chance of prevailing. This in turn would likely increase the number of children who have disabilities, through no fault of their own, who do not receive an appropriate education. Besides the unethical aspect of this, there are societal costs as well. This will increase the amount of assistance some of these individuals need as adults and hence increase the cost to taxpayers for many more years than a school career.

Thank you,

Mr. Keith Drost and Mrs. Cynthia Drost
140 Elmwood Drive
Cheshire, CT 06410
203-272-1901

5425

ki

Barker, K

Ms. Kim Barker
108 Keeler Ave
Norwalk, CT 06854-1619

March 6, 2010

Dear Representative Fleischmann:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism.

But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Kim Barker

5425

Ki

Lax

Mrs. Kim Lax
83 Webbs Hill Road
Stamford, CT 06903-4426

March 6, 2010

Dear Representative Fleischmann:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism.

But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Kim Lax

5425

K

Westcott

Honorable Members of the Education Committee:

I write to urge you to support HB No. 5425 and thereby overturn the current Burden of Proof law in Connecticut as it relates to Special Education.

You may recall that Connecticut is the only state where the Burden of Proof in Special Education due process hearings lies with the local board of education. Regardless of who brings the complaint, the board of education is responsible for proving that its actions (or lack of action) have not harmed the child's ability to have an appropriate education. Due process is costly in terms of administrative time and legal costs. Boards of education undertake due process only in extreme cases and when there is a good case. One of the realities of the current legislation is that districts have to weigh the cost of providing additional services against the cost of trying to prove that its existing educational plan is appropriate. In many cases adding services costing into the mid-five figures is the less expensive alternative. By aligning Connecticut law with Federal law...where burden of proof lies with the plaintiff, it is assumed all parties would only bring the most serious cases to due process.

Thank you for your thoughtful consideration of this important matter.

Sincerely,

Kimberly P. Westcott
Chair, Darien Board of Education

Subject: HOUSE BILL 5425

Ladies and Gentlemen:

we are writing to you as parents of a child with Autism, regarding your upcoming vote on the House Bill referenced above.

We urge you to vote to keep section 2 in the bill because it will ensure qualified practitioners for children with autism. We also urge you to vote to remove section 3 because it will make it too difficult for parents to have their children's rights to an appropriate education protected.

Sincerely,

Laura and Anthony Iorfino
Wilton, CT

5425

McCusker, L

Ms. Lauren McCusker
84 Church Hill Road
Sandy Hook, CT 06482-1110

March 6, 2010

Dear Representative Fleischmann:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism.

But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Lauren McCusker

HB 5425

5425
Bre #hauer**Support Section 2:**

I am writing to ask that you support Section 2 of Raised Bill 5425 which will require public schools to hire Board Certified Behavior Analysts (BCBA), Board Certified Assistant Behavior Analysts working under the supervision of a BCBA, or other professional licensed or certified by either the State Department of Education or Department of Public Health whose scope of practice includes behavior analysis when Behavior Analysis is part of an Individualized Education Plan (IEP).

Simply put, this bill will ensure that our children receive behavior analysis from qualified professionals, only when a child in our public school system has behavior analysis as part of their individualized education plan (IEP). Said services must be provided by someone who is licensed by the Department of Health or certified by the State Department of Education whose scope of practice includes behavior analysis or by a Board Certified Behavior Analyst (BCBA) or a Board Certified Assistant Behavior Analyst supervised by a BCBA.

This bill does not require that behavior analysis be part of a child's IEP but that it must be provided by a qualified person. BCBA is recognized credential in many states. The Behavior Analyst Certification Board, Inc. (BACB®) is a nonprofit corporation which oversees this certification. The Behavior Analyst Certification Board's credentialing programs are accredited by the National Council for Certifying Agencies in Washington, DC. It is important that school districts have clear direction from the State who meets the qualifications necessary to provide these services. Hiring people who are not qualified to provide these services put school districts at risk of parent lawsuits.

Oppose Section 3:

I am writing to object to Section 3 of Raised Bill #HB 5425 that establishes a statutory burden of proof lies with the party requesting a special education hearing. Given that the vast majority of actions are initiated by parents of disabled children, this change is in effect shifting the burden to these parents. The current law is well settled and states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP). The current law makes good sense because the school districts are in control of the records, staff, the experts, and have unlimited access to all the information about the program they are providing. Further, the districts can use their own staff as expert witnesses. In contrast, the parents have limited access to school programs, observations and are not educational experts. As it stands currently there is an imbalance of power; the districts are in a far better position with great numbers of staff and records to defend the programs they deliver vis-à-vis the the parents, who have limited resources given the need to raise their disabled child.

How would the proposed change affect parents who have children with disabilities in Connecticut? It stacks the deck more heavily in favor of school districts: Historically, the majority of hearings reviewing the delivery of special education services to students with disabilities, our most vulnerable population, are already decided in favor of the school districts. This bill proposes a drastic 180 degree change of the burden of proof in special education due process cases. It would make due process hearings excessively costly and would be an insurmountable challenge for parents, creating a situation in which the families could not have a fair hearing with any reasonable chance of prevailing.

Note that the Office of Protection and Advocacy for Persons with Disabilities opposes this section. I draw your attention to their testimony on identical legislation in 2009 HB 1142 (did not pass) dated March 23, 2009.

Last, any argument that this change is warranted by a Supreme Court case *Shaeffer v Weast* is specious. The holding in this case does not require that states change the burden of the proof. It is entirely appropriate under the law to leave the status quo unchanged.

Thank you for your consideration.

Lauri Bretthauer
63 Carriage Dr
Southport, CT 06890

L
Simoes

March 8, 2010

Testimony before Committee on Education
Re: H.B. #5425, "An Act Concerning Special Education"

by

Leslie Simoes, Assistant Executive Director/The Arc of Connecticut

Good afternoon Senator Gaffey, Representative Fleishmann, and Members of the Education Committee. I am Leslie Simoes, the Assistant Executive Director of The Arc of Connecticut, a 58-year-old statewide advocacy organization for individuals with intellectual disabilities and their families. We have 23 local chapters that provide supports, services, and advocacy throughout Connecticut.

I am here today to testify against of **House Bill #5425, "An Act Concerning Special Education"** particularly Section 3 subsection (d) (1) where it is proposing the change, "In making a determination as to the issues in dispute, the hearing officer or board shall review the evidence presented in the hearing with the burden of proof on the party requesting the hearing." This proposed change creates significant burdens to families with students with disabilities – as well as simply being unkind and unfair.

Parents already have enough on their plates already. Parents with children who have intellectual disabilities have even more challenges to navigate on a daily basis. By having to worry about and collect all the necessary paperwork for a situation that is already cumbersome and difficult seems ridiculous. School districts readily have the required documentation on hand or at least could obtain faster and with fewer difficulties than a parent.

Additionally, children with disabilities do not grow-up in a vacuum. By interacting with their non-disabled peers in a common and normal setting, such as school, it breaks down the barriers of fear and misunderstanding. The future policy-makers learn that children with disabilities are *not* that different from themselves after all.

The Arc of Connecticut strongly believes that by changing the language in this statute you are placing undue and unnecessary burdens on parents and families.

We urge this Committee to vote against this change outlined in **HB #5425**.

5425

000843

McDonald, L

Dear Chris,

I wanted to introduce myself, Linda McDonald from Fairfield, CT. I understand this new bill 5425 and wanted it known that I support section 2 but oppose section 3.

Section 2 of this bill is regarding the provision of ABA services in our public schools or at public expense. Currently those providing ABA services are the only professionals working with our children with special needs who do not have a minimum credential requirement. This bill would require school districts to utilize someone who either is a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analysts (BCaBA) working under the supervision of a BCBA, or another person credentialed by either the CT State Department of Health or State Department of Education who also has behavior analysis within their scope of practice to oversee these services.

Additionally, we are opposed to Section 3 of this same bill which would move the burden of proof in due process hearings from the school districts to the "moving party" which is almost without exception parents, representing a reversal of the law in Connecticut for over a decade. This would make it even more difficult if not impossible for parents to protect their children's special education rights effectively.

If you have any additional questions or would like to speak with me directly please feel free to contact me directly via email.

Thank you for reconsidering this bill.

Fondly,

Linda McDonald

5425

Talbert, L

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee, Please oppose as I do the provision in Proposed Bill #HB 5425 which seeks to shift the burden of proof to the party requesting a special education hearing. I am the parent of a child with a disability and a special education advocate to other parents. Please be assured, as I have testified to this committee before, how absolutely difficult it is for parents to obtain the necessary evidence to go forward in a complaint against the schools. The natural advantage of schools is great enough, but I do believe that having them as the party that always must prove the appropriateness of their programs is important to quality assurance and fairness to families.

The current law is necessary because school districts are in control of the records, staff, the experts, and have unlimited access to all the information about the program they are providing. As parents, one of our few remaining levelers in the playing field is that the school must prove the appropriateness of its evaluation or program, not that non-expert parents have to prove the contrary. I can tell you from personal experience that it is very, very difficult to get a complete set of records from the school, despite the many laws saying schools have to provide parents with access to records. From my experience, I know that a parent may not know all the records to ask for and the school "forgets" to mention or provide what they have. Schools can use their own teachers as expert witnesses; hire \$400/hour attorneys; have the support of paralegals and law libraries. A parent representing the interests of a child *pro se* does not have these resources available and may not be able to front retainer fee of several thousand dollars to a parent attorney or have confidence in the supposedly "free or low-cost legal services" available. It is impossible to overstate the huge imbalance of power when a parent tries to get a fair hearing.

Please leave the burden of proof with school districts who are supposed to provide the free and appropriate education. There is a fundamentally unfair reason that schools want to shift the burden of proof to the complaining party -- they rarely complain about themselves! Schools *are* the government and have the full force of the rest of the government behind them.

Please keep in this smallest slice of equity for the parent attempting to receive a fair hearing from an impartial officer. Please oppose a change to the burden of proof in Raised Bill No. 5425 - or HB5425.

Thank you,
Linda Talbert

Linda J. Talbert, LLC
Special Education Advocacy
10 Wall Street, Norwalk, CT 06850
203-899-0745 (office)
203-550-3930 (cell)
203-853-9246 (fax)
LindaTalbert@me.com
Website: www.SpecialEducationAdvocateCT.com

5425

C. Randall

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee,

I am writing to object to the provision in Proposed Bill #HB 5425 that establishes that the burden of proof lies with the party requesting a special education hearing. The current law states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP). The current law reflects well-settled Connecticut policy. The current law makes good sense because the school districts are in control of the records, staff, the experts, and have unlimited access to all the information about the program they are providing. They can use their own staff as expert witnesses. Compare the schools to the parents, who often can't even understand the jargon used at the IEP meetings. This is a huge imbalance of power; the districts are in a far better position to defend the programs they deliver, as opposed to the parent to prove that the program is inappropriate.

It takes years to even get an idea of the special education process for a new parent and is very frustrating.

How would the proposed change affect parents who have children with disabilities in Connecticut? It stacks the deck more heavily in favor of school districts. Historically, the majority of hearings reviewing the delivery of special education services to students with disabilities, our most vulnerable population, are already decided in favor of the school districts. This bill proposes a drastic 180 degree change of the burden of proof in special education due process cases. It would make due process hearings excessively costly and would be an insurmountable challenge for parents, creating a situation in which the families could not have a fair hearing with any reasonable chance of prevailing.

I already think the system is too complicated and the schools just pass our students along from year to year without the appropriate help. Please don't make it more difficult for parents to figure out how to help their children.

Thank you.

Regards,

Lorraine Randall

Old Greenwich, CT 06870

5425
L Arezzini

Dear CT Education Committee,

As veteran teachers and parents of a 19-year-old with autism we are devastated by the lack of an appropriate transition program for our son. We live in an expensive community and have limited resources. To have the burden of proof fall on us in a due-process hearing on behalf of our son is unconscionable.

In a wealthy state like CT, vulnerable young adults with disabilities should be able to have their rights protected. Young adults with disabilities have talents, potential and dreams that need to be fulfilled. If our public school system will not provide students like my son with a free and appropriate education, we should not be thwarted in our efforts to advocate for our child's rights. Most parents have economic constraints and cannot hire experts to observe public school programs that are ill-equipped to meet their child's needs. Families suffer enough when loved ones are stricken with profound disabilities. If our towns allow money to rule their conscience in regards to providing special needs youngsters a suitable education, then the state government needs to provide the moral leadership. Please do not add yet another "burden" to beleaguered special needs families by changing the current law to make parents show the burden of proof in a due-process hearing. Thank you.

Sincerely,

Lynn and David Arezzini

March 7, 2010

5425

000847

Marquis, M

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee,

I am writing to object to the language in Proposed Bill #HB 5425. The language states that the purpose of the bill is "to establish that the burden of proof lies with the party requesting a special education hearing;" The current law states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP). The current law makes good sense because the school districts are in control of the records, staff, and the program. How would the proposed change affect parents who have children with disabilities in Connecticut? It stacks the deck more heavily in favor of school districts.

Historically, the majority of hearings reviewing the delivery of special education services to students with disabilities, our most vulnerable population, are already decided in favor of the school districts. This drastic 180 degree change of the burden of proof would make it excessively costly and almost impossible for parents of students receiving special education services to have a fair hearing with any reasonable chance of prevailing.

Thank you,

Madeleine Marquis

390 Farmington Ave.

Waterbury, Ct 06710

madeleinemar@sbcglobal.net

203-754-9174

5425

Buckingham, M



CONNECTICUT SPEECH-LANGUAGE-HEARING ASSOC. INC.
213 BACK LANE
NEWINGTON, CT 06111-4204
(860)666-6900 Fax (860)667-0144

e-mail (csha.assoc@snet.net) web address (www.ctspeechhearing.org)

3/7/2010

Good Afternoon Mr, Gaffey, Mr. Fleischmann and members of the Education Committee. My name is Mallory Buckingham and I am the VP for Government Affairs with the CT Speech Language and Hearing Association. (CSHA). I am writing regarding H.B. 5425, An Act Concerning Special Education.

I am concerned about changes proposed to reconstitute the State Advisory Counsel on Special Education, which is detailed in Section 1 (a).

Under the current language, CSHA is recognized as a standing member of the CT State Advisory Counsel for Special Education. The current legislation proposes to reduce from three members to one member the appointments made by the President Pro Tem of the Senate and removes explicit recognition of a CSHA representative on the Counsel.

Although I understand the desire of the Education Committee to reduce the number of members on this counsel, CSHA feels we have a unique role to play and should continue to be included for several reasons. The greatest shortage area in public school personnel is currently Speech-Language Pathologists. CSHA has a good working relationship with the Bureau of Special Education and has played an active role on the Counsel. The role of language ability in a student's regular or special education is central to successful, academic achievement.

Thank you for allowing me to share my position on HB 5425. I hope you will consider leaving the language unchanged, delineating a member from the CT Speech Language Hearing Association as a member on the State Advisory Counsel for Special Education.

Sincerely,

Mallory Buckingham, MS, CCC/SLP

5425

Talisso, M.
5/15

Dear Mr. Calabrese

I am writing to oppose the Special education bill that the Connecticut General Assembly's Education Committee will be voting on today. As a parent of twins with hearing loss, I believe there are enough hurdles for us parents and for our children to overcome and we do not need another one. Our children make this world a better place (or worse), depending on the kind of education and care they receive. Special ed children have a great potential if cared for properly, which, with all due respect, only parents can handle best as they, like no one else, understand and know their child. If we make it difficult for parents to stand up for their helpless children, then what would we expect of our children when they grow up? What kind of understanding are we showing them? Families matter in CT!!! Please make it so!!!

This is my vote to say NO to this bill.

Thank you
Marcela Talisso

There is no testimony for page 850. The next page is 851.

5425

Mayo, M

March 8, 2010

Education Committee
Room 3100, Legislative Office Building
Hartford, CT 06106

Re: **HB 5425, Sections 2 and 3**

Dear Education Committee:

Our names are Mark and Marinelle Mayo, we reside in Fairfield, CT and are the proud parents of a 15-year old boy in the autistic spectrum. We are writing you because we strongly urge you to **OPPOSE Section 3 of HB 5425** which would move the burden of proof in due process hearings from the school districts to the "moving party", which is almost without exception, the parents. This would make it impossible for parents (who do *not* have the financial and professional resources of a school district behind them) to protect our child's educational rights effectively. As parents, it is our child's right to ensure a meaningful and independent life, and opposing Section 3 of HB 5425 would allow us the means to continue to advocate for our children.

Allowing Section 3 of HB 5425 would not allow a level playing field for the parties involved since it would skew so far in the district's favor (unlimited professional and monetary resources) that most parents would be intimidated before the process even began. It is unfair to ask parents of special needs parents to bear the additional burden of proving that a school district is out of compliance.

We are also writing to ensure that you **SUPPORT Section 2 of HB 5425** which states that only those with a credential in behavior analysis are utilized by public schools to oversee implementation of children's IEP's when these services are called for on an Individualized Education Plan (IEP).

Our son attended Fairfield public schools for six years and we saw minimal educational and social progress after exhausting all the resources (which included a consultation with a behavioral analyst) available to us through the system. As a result of the lack of progress, escalating anxiety and behavioral issues, we enrolled our son in the Connecticut Center for Child Development in Milford, which employs the Applied Behavioral Analysis (ABA) method to teach autistic children. In the past three years our son has attended this school, he has made significant academic and social progress because of the methodologies and well-written program employed by the highly-trained staff. We are grateful that this type of school now exists for our son because we had not realized how successful an ABA program can be. As parents who see significant positive gains in our son, we are cognizant of how skilled and informed school staff must be in order to implement an ABA program for the autistic population.

We have great safeguards in place for consumers of a wide variety of services yet those working with some of our most disabled students are not monitored in any way. We are hoping you will join our effort to protect the health and well being of the children we cherish, the parents who love them, and the school districts who have to pay the bill. **We beg you to please oppose Section 3 and support Section 2 of HB 5425.**

Sincerely,

Mark T. Mayo and Marinelle Mayo
1600 Cross Highway
Fairfield, CT 06824
203-254-7316

5425

March 7, 2010

Education Committee
Connecticut State Legislature

Dear Esteemed Education Committee Members,

I am a mother of two children. My youngest who just turned 6 years old has been diagnosed with PDD NOS which is on the Autism Spectrum. Before you are choices to enhance or negatively impact the lives of children with special needs. Please ensure that school districts provide a free appropriate education for those with disabilities. You are in fact the only body that can ensure that these children are protected.

I strongly support Section 2 in this Bill. Applied Behavioral Analysis is the only protocol deemed effective in enhancing outcomes in autism as evidenced by data collection and peer reviewed studies. Having a BCBA in charge of children's autism cases is the only way to ensure that qualified professionals in the protocol are treating our children. Without your insistence that a BCBA run these cases, I fear that school districts will employ those with random qualifications that are not suitable to run autism cases. I've seen this happen and can only hope that you set a standard that will stop practices that are ineffective for our kids. The only way to assure that this doesn't happen is to require that a BCBA be in charge of any child who meets the requirements for such supervision on their IEP.

I strongly oppose Section 3 in this Bill. The burden of proof is something that should be placed with the school district. The school district has lawyers on retainer and can spend taxpayer money to defend itself. Parents have to exhaust their own funds which is difficult for many and you will make it more difficult if this legislation passes. I ask you to think about who you are protecting here? I hope that you answer the children with special needs. The school districts can stop parents from filing due process if they provide adequate programming for our kids. As someone who has been through this very difficult process, it is not something any parent wants but something as a parent you feel compelled to do when the treatment your child receives is so grossly inadequate.

School Districts are lobbying you hard to shift the burden of proof because they are facing shrinking budgets. However, these shrinking budgets are the very reason you should vote to keep the burden of proof with the school districts. Shrinking budgets mean Special Needs Programs are being cut further and with those cuts often comes inadequate programming for our children. Inadequate programming for a special needs child is not just losing some time but can mean the difference of living independently or being able to seek employment some day. For other Special Needs children the difference in programming is them excelling in the academic arena and attending college. The stakes are very high for our kids and our state if you get this wrong. There are other programs school districts can cut in these tough economic times. Don't let the cuts come at the expense of those that need the most help.

The only protection our Special Needs children have are what you vote for. I am convinced that Special Needs Education is the Civil Rights Issue of our time. Does a small minority of children deserve to be taught with research based protocols that are proven to work for them or not? The lack of understanding of our own school administrators is astonishing so as with all civil rights cases it is only the legislature that can enforce laws that protect the minority. Please do your civic duty and protect the most vulnerable in our society during the most challenged of economic times. Protecting those that can't protect themselves is why I imagine many of you got into public service. I plead with you to adhere to this higher calling and protect the most vulnerable children in Connecticut!

Thank you,

Mary Dougherty
Ridgefield, CT

5425

M Dougherty

Mrs. Mary Dougherty
89 Silver Spring Lane
Ridgefield, CT 06877-5618

March 7, 2010

Dear Representative Fleischmann:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism.

But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Mary Dougherty

5425

EZARIK, M

Dear Chris,

I am writing as a concerned parent about the Raised Bill No. 5425, or HB5425, being proposed, which would shift the burden of proof for due process hearings to the family and away from the school district.

This legislation simply sounds like the latest attempt to make it more difficult for families with special needs children to get them the free, appropriate public education they are entitled to.

My family is currently going through the transition from Birth to 3 services to our school district, and already I am seeing attempts to save budget dollars rather than offer the services my son needs.

Please, give families a break! We have enough to worry about with our children and their futures, without also having to worry about additional ways that school districts may be able to get out of providing appropriate services.

Sincerely,
Melissa Ezarik
Stratford, CT

5425

M 000855
Rosa

Ms. Melissa Rosa
6 Crown Ridge
Newington, CT 06111-4228

March 5, 2010

Dear Representative Fleischmann:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism.

But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Melissa Rosa

5425

000856

M. Vande Voort

We have a child that is in 8th grade, and has been at the same present level of academic achievement, and same annual goals for three years in a row. Our child hasn't received any special education services in his I-9 for three years. When I got educated last summer and questioned them, they have changed our child's Woodcock Johnson III testing results three different times and (raised his scores) to try to convince us that our son is making progress. When did it become alright for this district not to provide his proper education services because they feel they don't have to. We've had to hire an attorney because they won't budge. We do have a case and have proof in the past three years of not providing him his FAPE laws. Now my son is 4 years behind and they only want to give him 10 minutes of special education for math, reading, written language.

We want to know when did it become all right not to do your job? Where is the accountability? There is none! That is awful, these are kids that need an education, when did it become alright to not provide an education and still have no accountability? But yet every school has a policy in place for children for accountability, where is a policy in place for accountability being in compliance? This law needs to change.

We're ready to hand over our keys to the bank and move because if this goes to DUE PROCESSING it will cost us \$40,000-\$80,000 for attorney fees. My husband is a police officer and has state/federal laws he has to follow, and where can any family afford to file for due processing when we don't make \$80,000 a year.

Thank you,

Melissa VandeVoort
vvoort5@gmail.com

--
Melissa VandeVoort

5425

M. Cocchiola

Mr. Michael Cocchiola
98 Briarwood Road
Naugatuck, CT 06770-1610

March 5, 2010

Dear Representative Fleischmann:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism.

But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Michael Cocchiola

5425

M

Weinberg

Dear Chris,

For the record, I wish to strike out the statement in paragraph 2, last sentence pertaining to the "under 3 group" as this was included in error during edits. Also, any recommendations regarding added consumer protections or licensure are merely suggestions for the future, not at present. Thank you,

Michael Weinberg
Sent via BlackBerry by AT&T

Weinberg, M

5425

r. Michael Weinberg
185 Fabyan Rd.
N. Grosvenordale, CT 06255-1506

March 5, 2010

Dear Representative Fleischmann:

I ask that you please consider a higher level standard of education and training regarding Section 2 of HB5425; An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism. However, behavior analysts, and our flagship international organization, the Association for Behavior Analysis International, representing over 16,000 members worldwide, consider that these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis. The Association for Behavior Analysis International (ABAI) and its Practice Board support a higher level of training and education to increase consumer protection as well as quality and effectiveness of behavioral interventions for students with special education needs. The standards include minimally a full master's degree from a program that is accredited by the ABAI Accreditation Board or provides equivalent coursework, and who have had a year of supervised experience under the supervision of someone similarly trained. I hope that you will take this training qualification into consideration in your review of this proposed legislation to ensure children in our state receive the highest level of services available by qualified professionals, and thereby enhance consumer protection.

Sincerely,

Michael Weinberg, Ph.D., BCBA-D

5425

Weinberg, M

Testimony regarding CT H.B. 5425 An Act Concerning Special Education

Monday, March 8, 2010

Dear Education Committee members,

Good afternoon. My name is Michael Weinberg, and I thank you for the opportunity to present my views on this bill.

I am a resident of Thompson CT, a licensed Psychologist here in CT, and BCBA.

I am also a member of the Association for Behavior Analysis International's (ABAI) Practice Board, with 6,000 members, and total with affiliate chapters members, including CT ABA, of over 16,000 members worldwide.

I wish to congratulate The Connecticut General Assembly's Education Committee's work to recognize the need to establish standards to protect children receiving Applied Behavior analysis (ABA) services by considering Bill 5425. I would go on to stress that consumer protection should be the primary focus of this bill, and suggest that they include the under 3 group in this bill;

As a practitioner for nearly 30 years, I am concerned that there is a risk to students/children from the use of Applied Behavior Analysis by untrained/undertrained practitioners. The national trend has been to move to the establishment of a formal licensing standard for Behavior Analysts, with an increase in the training and experience required to be recognized as a Behavior Analyst, which has now been enacted into law by 4 states. Speaking for myself and the ABAI practice board, we wish to support this legislation with the BCBA as an entry level qualification. Over time, we hope to work to increase the educational and training requirements for behavior analyst practitioners, eventually moving toward licensure. But, we recognize that there needs to be a starting point, and the existing behavior analyst certification program is a very good one. I wish to respectfully suggest a means of consumer protection be included in the bill, as you deem appropriate. This will help safeguard against practitioners not adequately trained or not providing effective or appropriate behavior analysis services.

We are now seeing that those with the BCBA in CT, as well as other states, are able to receive insurance payment for services to children on the autism spectrum that began here in January, 2010. However, I notice in the billing codes that BCBA's are permitted to bill at lower rates than their licensed counterparts such as licensed psychologists, or speech therapists. There is a national move to billing insurance companies for ABA services and these insurance companies are moving to requiring independent licensure in order to bill for services. Insurance companies will pay at higher rates to those licensed, rather than those with certification or not licensed.

Finally, I am submitting for your review a copy of a letter sent in January 2010, by the current president of the Association for Behavior Analysis International, Dr. Ray Miltenberger, concerning licensing and a copy of the ABAI's model bill. This is intended to provide a standard for developing such legislation when and if the state and its behavior analyst professionals are ready.

Michael Weinberg, Ph.D., LP, BCBA-D

The ABAI Model Licensing Act, Educational Standards, and the Protection of the Profession

By Raymond G. Miltenberger

This article is offered on behalf of the ABAI Executive Council and provides an update on the most recent developments within the Association and behavior analysis in support of the professionalization of our field and the protection of its scientific and educational underpinnings. Recently, affiliated chapters in the United States and internationally have been working to protect and promote the profession of applied behavior analysis through legislative and lobbying efforts. Licensure, among a number of other topics, is currently being pursued through states' efforts across the U.S. at the grassroots level. Arizona, Nevada, Oklahoma, and Pennsylvania have recently enacted laws establishing licensing standards for applied behavior analysts. Several others, including Kentucky, Massachusetts, Missouri, New Jersey, and Tennessee, are in the process of developing and/or considering such legislation. Behavior analysts and members of behavioral associations in other countries also are beginning discussions related to how to license or otherwise regulate the profession of behavior analysis.

In 2008, the ABAI Executive Council approved, in principle, a recommendation of the Practice Board to pursue development of an ABAI Model Licensing Act. Central to this decision was the uniformly held understanding that ABAI has a responsibility to promote the protection of consumers of applied behavior analytic services. Since that meeting, many hours have been spent drafting and refining a Model Licensing Act that ABAI could support. ABAI's Model Act is now complete, and we are pleased to make it available to Association members, constituents, and consumers of behavior analysis services. One purpose of this article is to provide background on the development of the Act and to elucidate the Council's understanding of the implications of its dissemination in the public realm.

Why Licensing?

The ABAI Council's agreement to pursue licensure efforts was made with the input of ABAI members. In 2008, ABAI conducted a strategic development survey of members and constituents, including members of state and international chapters and special interest groups. The survey was distributed to over 16,000 stakeholders worldwide. The overwhelming majority of respondents indicated support for the pursuit of a licensing standard for applied behavior analysts.

Licensure allows consumers to identify behavior analysts with defined competencies and protects them from harm and the misuse of behavioral technologies by untrained practitioners. It allows for legal oversight of professionals who meet criteria established by state boards and who wish to advertise themselves as "behavior analysts." State boards have the staff and authority to respond to complaints by the general public (or other behavior analysts) of unethical practices by those who are licensed, which protects not only consumers but also professionals who practice following ethical guidelines.

Furthermore, licensure promotes credibility of the field. It defines our field and scope of practice within state law, protecting it from other groups or professions that might attempt to claim jurisdiction over our technologies and the right to supervise our work. Licensure also has the potential to result in more funding for research and more support for academic programs and positions in behavior analysis. Finally, defining our profession legally through licensure could facilitate our ability to secure third party payment for our services and to promote and advocate for other professional issues of importance to the field.

Risks Associated with Licensure

ABAI recognizes that licensing, if pursued without careful consideration of potential consequences and pitfalls, has the potential to negatively affect the profession within a state. We believe that the attached Model Licensing Act provides an appropriate standard to guide state chapters in the process of developing individual state licensing laws. We strongly encourage each state affiliated chapter to consider carefully the nature of the political climate in the state and take from this Model Act those sections that meet your needs. Members of the Practice Board and others representing ABAI have developed a Legislative Handbook addressing many of the preliminary issues that must be considered prior to initiating such an effort. We strongly recommend that state chapters review this document, and if desired, invite members of the Practice Board to attend their respective chapter meetings and/or consult with them throughout the process. We recognize states' rights and recommend that decisions about procedures and the ongoing process of administering licensing standards rest with the state board overseeing the profession.

How Does Licensure Differ from Certification?

Licensure and certification are different, but could be compatible methods of defining the credentials of professionals in a field. Certification is most often done by private organizations, such as the Behavior Analyst Certification Board (BACB), while licensing is done through state boards. Board Certification is a non-statutory recognition of professional achievement generally given by an outside organization to professionals who have completed a terminal degree in their respective field and demonstrated competency in their field. Licensing is the legal control of the use of a title and the scope of practice of a profession. Obtaining a license is required of occupations and professions where maintenance of standards is required to protect public safety. In order to establish 'applied behavior analyst' as a licensed profession, state legislation is necessary, thus the need for lobbying and advocacy—state legislators need to be convinced that specific credentials for an area of expertise are needed to protect consumers.

One advantage of states adopting the ABAI Model Licensing Act is that individual state licensing bills will have consistent requirements across states, making portability of the credential possible from state-to-state. ABAI encourages individual states to develop licensing bills which specifically facilitate such portability and encourages states to retain uniform educational standards.

What is ABAI's Model Licensing Act?

ABAI's Model Licensing Act is a document for use by legislators drafting bills that govern the profession of applied behavior analysis. The Model Act is provided in full following this article. It defines the makeup and powers of state boards, the scope of practice of the profession, and standards to qualify for licensure—education, practicum, examination, and continuing education requirements. The Act also addresses complaint resolution and ethical violation investigation as well as penalties for operating without a license or in violation of ethical guidelines or the laws of the state.

What are the Points of Similarity between the BACB and ABAI Model Acts?

The ABAI Executive Council is committed to the development of a unified position within the field and has worked with the BACB to find common ground with regard to licensure, in the hopes of developing a unified Model Act. At the 2009 ABAI annual convention in Phoenix, representatives of the ABAI Executive Council and Practice Board met with Drs. Judy Favell and Gerald Shook to discuss our positions and begin the process of producing a unified bill. The results of this meeting were very positive, with the majority of the differences in our two positions resolved and the beginnings of a single bill developed.

ABAI's Model Act shares many characteristics with the BACB's Act, including adoption of:

- bachelor's level licensure;
- the requirement that all applicants must first meet the standards of the BACB to apply for licensure and pass the BACB examinations;
- a requirement that all approved educational institutions meet the standards as an "Approved Course Sequence" of the BACB;
- a standard that all bachelor's level behavior analysts be supervised by either a master's or doctoral-level licensed behavior analyst; and
- a requirement that all licensed applied behavior analysts maintain their active status under the Behavior Analyst Certification Board.

How do the BACB and ABAI Model Licensing Acts Differ?

The main remaining difference between ABAI's Model Act and that of the BACB is in defining educational standards for becoming licensed. The BACB's Act requires that potential licensees complete 135 (bachelor's level) or 225 (master's level) classroom hours of instruction in applied behavior analysis and hold a degree (in any field) to be eligible for licensure. ABAI believes that licensure should require further training. The ABAI Executive Council, Education Board, Practice Board, and Science Board all have defined a critical need for higher educational standards for licensees. More robust standards are necessary to practice independently and help improve the protection of as well as quality of services provide to the consumers of ABA services. ABAI's position is also based on the fact that, in every other human service profession that is licensed by its state and allowed to practice independently and bill individuals or third party insurers for their services, licensees are required to hold a degree in their respective profession.

Rational for Grandfathering Clause

ABAI's Model Act provides two alternatives for the licensing of professionals who do not meet the regulatory standards for licensing otherwise provided at the time of the establishment of the licensing law, allowing a five year period to become licensed under these waivers. The first provides that all persons certified by the BACB are eligible for licensing, irrespective of the ABAI accreditation status of the program from which they graduated or the number of graduate (undergraduate) credit hours completed. The second provides for the licensing of behavior analysts who are not BACB-certified, but who meet specific educational/experience standards established by the State/Commonwealth Board of Registration. The second alternative is particularly important for the membership of ABAI, given that the majority of respondents to ABAI's 2008 strategic development survey who self-identified as "practicing applied behavior analyst" do not hold certification by the BACB. Given that Boards of Registration are composed of Licensed Behavior Analysts, we trust that only highly qualified non-BCBA applicants will be granted licensure under this clause.

MW Note: The 2nd clause seems contradictory to the earlier statement that all licensees must become, and maintain, BACB Certification.

What are ABAI's Criteria for Education Requirements?

The Council believes that licensing applied behavior analysis not only protects practitioners, but also protects the integrity of and demand for higher education training in behavior analysis: Promotion of appropriate educational requirements for licensed practitioners is ABAI's top priority. An initial strategic session held a year ago in Chicago with representation of the Membership, Science, Education and Practice Boards recommended revised educational criteria. Graduate programs in behavior analysis are now being reviewed to see how they meet

recommended criteria and how further criteria for accreditation standards and licensure have the potential, if pursued correctly, to preserve experimental and conceptual foundations as the field grows. During the last Council meeting, the Association made significant advances in developing and enhancing training standards for the field in the areas of licensure of individuals and accreditation of educational programs. The ABAI Council hopes that the educational standards in state licensing laws are those specified in the ABAI Accreditation programs. The criteria are under revision and will be announced by May of this year.

ABAI began the process of accrediting graduate programs in 1988. As the field becomes further professionalized and licensure makes its way through state legislatures, the alignment of educational requirements for licensees with those of accredited programs must be undertaken. To that end, the ABAI Council has initiated several projects, the first of which is to approve the development of undergraduate accreditation programs. ABAI's undergraduate accreditation system will recognize two different emphases for undergraduate education—applied and experimental. The Council also directed that both master's and doctoral level accreditation program requirements be reviewed and revised to align with licensure goals and the requirement of ABAI's Model Licensing Act. Criteria are currently undergoing review with input being sought from the Education, Science, and Practice Boards as well as accredited programs. It is expected that revised criteria will be launched by May 2010.

We also will pursue recognition by the Council for Higher Education Accreditation (CHEA) this year. CHEA recognition will ensure that the profession of applied behavior analysis is understood to require standards similar to all other human service professions and will enhance the protection of consumers by ensuring a level of competency and training far beyond those currently required.

How Will ABAI's Accreditation Program Meet the Needs of Licensed Behavior Analysts?

While it is the goal that graduation from an ABAI Accredited program be a requirement for licensure, this requirement is meant to be grandfathered in over a period of five years. To date, a total of 23 behavior analysis programs at 16 universities have sought ABAI accreditation. We expect that, with the advent of licensure and national recognition of the ABAI accreditation program, programs will have new contingencies to explore accreditation. It is a primary goal of ABAI to encourage and assist programs to seek accreditation so that within 5-7 years there will be an educational infrastructure in place to support the substantial growth in the field we expect to see as state licensure laws are established. During the grandfathering period, ABAI will embark on a program we are calling the ABAI Educational Capital Campaign: Investing in our Future to encourage and assist programs to seek accreditation.

What Will We Do for Those Outside of the USA?

The field is growing not only in the United States ~~but~~ but also in many other countries represented by our members and affiliated chapters. ABAI will work with national chapters on a one on one basis to identify needs within other countries and to develop strategies to promote international professionalization in the field. The Practice Board in conjunction with ABAI's International Representative to the ABAI Council is eager to provide consultation to help develop strategic plans to make this happen.

Where Can You Receive Guidance and Support?

ABAI welcomes your input on the issues of licensure and the development of educational requirements for the field. As well, if you are interested in training or access to expertise as your state chapter addresses issues of licensure, we encourage chapter officers to contact the ABAI Practice Board, who will be happy to arrange presentations and training sessions during your events. Furthermore, we welcome Program Directors and Department Chairs to participate in

the development of strategies to bring behavior analysis programs into alignment with accreditation requirements. Members of the ABAI Executive Council and Practice Board have attended numerous state conferences over the past several months to address these issues and offer support in the development of state licensing laws. ABAI is committed to this process and recognizes the need for our profession to speak to legislators and stakeholders with a single voice. We will continue to work diligently to provide guidance to graduate training programs and to members of U.S. state chapters and countries around the world to provide guidance for educational standards and model licensing for the profession.

ABAI Model Licensing Act for Applied Behavior Analysts

SECTION 1. Adding the following sections: hereby amends the General Laws of the State/Commonwealth of _____.

Section 101. (a) There shall be within the division of professional licensure a Board of Registration of applied behavior analysts, in this section and in sections 102 through 104, hereinafter called the Board, consisting of nine members appointed by the governor for terms of three years. Members of the Board shall be residents of the State/Commonwealth and citizens of the United States. Five members of the Board shall be Licensed Behavior Analysts and two shall be Licensed Assistant Behavior Analysts, under the provisions of sections 236 through 252 and shall have been actively engaged in the practice of applied behavior analysis for the five years preceding their appointment. Two members of the Board shall be selected from and shall represent the public.

(b) Of the initial members appointed to the Board, three shall serve for terms of three years, three for terms of two years, and three for terms of one year. Each member of the Board shall hold office until his/her successor has been qualified. A vacancy in the membership of the Board shall be filled for the unexpired term in the manner provided for the original appointment. No member shall serve more than two consecutive full terms. A member appointed for less than a full term may serve two full terms in addition to such part of a full term.

(c) The governor shall have the power to remove from office any member of the Board with cause after submitting in writing to the Board member the reasons for his/her removal and describing the right to a public or private hearing with counsel at least thirty days before the proposed removal.

Section 102. The Board shall at its first meeting and, annually thereafter, organize by electing from among its members, by majority vote, a chairman, a vice-chairman, and a secretary. Such officers shall serve until their successors are elected and qualified. The Board shall hold at least two meetings each year, but additional meetings may be held upon the call of the chairman, or the secretary, or at the written request of any three members of the Board. Five members of the Board shall constitute a quorum. The members of the Board shall serve without compensation but each member shall be reimbursed for actual expenses reasonably incurred in the performance of his/her duties as a member on behalf of the Board. The Board shall be empowered to hire such ~~assistants~~ assistants, as it may deem necessary to carry on its activities.

Section 103. The Board shall have the following powers and duties: (i) to examine and pass upon the qualifications of all applications for licenses under sections 236 through 252, and issue a license to those who are determined to be qualified as applied behavior analysts or assistant behavior analysts; (ii) to adopt rules and promulgate regulations governing the licensure of applied behavior analysts and the practice of behavior analysis; (iii) to recommend policy and budgetary matters to the division of professional licensure; (iv) to establish specifications for the

licensure examination, which may be or may include the complete certification examination given by the Behavior Analyst Certification Board®, or its successor, and to provide or procure appropriate examination questions and answers and to establish examination procedures; (v) to define by regulation the appropriate standards for education and experience necessary to qualify for licensing, including, but not limited to, continuing professional education requirements for Licensed Behavior Analysts or Licensed Assistant Behavior Analysts, which shall be no less stringent than those of the Behavior Analyst Certification Board, or its successor; and for the conduct and ethics which shall govern the practice of applied behavior analysis; (vi) to receive, review, and approve or disapprove applications for a reciprocal license to applicants who are licensed or certified as applied behavior analysts in another state and who have demonstrated qualifications that equal or exceed those required pursuant to sections 236 through 252, provided that no reciprocal license shall be granted under this section to an applicant unless the state in which the applicant is licensed affords reciprocal treatment to persons who are residents of the State/Commonwealth of _____; (vii) to establish standards of supervision for students or persons in training to become qualified to obtain a license in applied behavior analysis; (viii) to fine, censure, revoke, suspend, or deny a license, place on probation, reprimand, or otherwise discipline licensees for violations of the code of ethics or the rules of the Board in accordance with sections 246, 248, and 250, but the Board shall not have the power of subpoena; (ix) to summarily suspend the license of a licensee who poses an imminent danger to the public but a hearing shall be afforded to the licensee within 7 days of an action by the Board to determine whether such summary action is warranted; and (x) to perform such other functions and duties as may be required to carry out this section.

MW Note: Regarding the reciprocity statement - it seems to not support reciprocity well if one state can impose higher criteria than another state - then states can therefore continue to add requirements for education and training for example, that a licensee in one state may not have when seeking licensure in another state. The candidate would need to re-take courses, or take additional coursework, or hours of supervision to be licensed under this concept. I see this as a problem and is not consistent with the concept of reciprocity.

Section 104. The Board may also appoint Licensed Behavior Analysts, subject to the approval of the director of consumer affairs and business regulations, who meet the qualifications for appointment to the Board, to assist in the administration of the examination required by sections 237 and 239. Said assistance shall be provided under the supervision of a Board member.

Section 105. The Board shall take no action with respect to the granting of a license or its revocation or suspension without the concurrence of at least five members of the Board. The Board shall adopt a seal that shall be affixed to all licenses issued by the Board.

Section 106. The Board shall make available to the public a list of Licensed Behavior Analysts and Licensed Assistant Behavior Analysts.

Section 107. The members of the Board shall be indemnified by the State/Commonwealth for all actions taken as part of their responsibilities described herein.

SECTION 2. The General Laws of the State/Commonwealth is hereby amended by adding the following sections:

Section 236. As used in sections 236 through 252, the following words, unless the context clearly indicates otherwise, shall have the following meanings:

"Applied Behavior Analysis", is the design, implementation, and evaluation of systematic environmental modifications for the purpose of producing socially significant improvements in and understanding of behavior based on the principles of behavior identified through the experimental analysis of behavior. It includes the identification of functional relationships

between behavior and environments. It uses direct observation and measurement of behavior and environment. Contextual factors, establishing operations, antecedent stimuli, positive reinforcers, and other consequences are used, based on identified functional relationships with the environment, in order to produce practical behavior change.

"Applied Behavior Analyst", is an individual who by training and experience meets the requirements for licensing by the Board and is duly licensed to practice applied behavior analysis in the State/Commonwealth.

"Board,"—the Board of Registration of applied behavior analysts.

"Licensed Behavior Analyst (LBA)", an individual who by training and experience meets the requirements for licensing by the Board and is duly licensed to independently practice applied behavior analysis.

MW Note: I had thought we were going to use the term "Licensed Applied Behavior Analyst."

"Licensed Assistant Behavior Analyst (LABA)", an individual who by training and experience meets the requirements for licensing by the Board and is duly licensed to practice applied behavior analysis under the supervision of a Licensed Behavior Analyst.

"Recognized educational institution", a degree-granting college or university that is accredited by a Regional Board or Association of Institutions of higher education approved by the Council on Post Secondary Education of the United States Department of Education, or which is chartered to grant doctoral degrees by the State/Commonwealth. Such institutional accreditation shall exist at the time that the respective degree is granted or within two years thereafter. The program must be accredited by the Accreditation Board of the Association for Behavior Analysis International[®]. The program must also include an approved course sequence of the Behavior Analyst Certification Board or its successor.

"The scope of practice of applied behavior analysis" is defined as the application of the principles, methods, and procedures of the experimental analysis of behavior and applied behavior analysis (including principles of operant and respondent learning) to assess and improve socially important human behaviors. It includes, but is not limited to, applications of those principles, methods, and procedures to (a) the design, implementation, evaluation, and modification of treatment programs to change behavior of individuals; (b) the design, implementation, evaluation, and modification of treatment programs to change behavior of groups; and (c) consultation to individuals and organizations. The practice of behavior analysis expressly excludes psychological testing, neuropsychology, cognitive therapy, psychoanalysis, hypnotherapy, and long-term counseling as treatment modalities.

Section 237 (a). The standards to qualify for the designation of Licensed Behavior Analyst include:

A doctoral or master's degree from a recognized educational program accredited by the Association for Behavior Analysis International Accreditation Board; or from a program at a recognized educational institution that is approved by the Board and that substantially meets the educational standards of the Association for Behavior Analysis International Accreditation Board. The program must also include an approved course sequence of the Behavior Analyst Certification Board.

The successful completion of an approved practicum or supervised experience in the practice of applied behavior analysis, totaling at least 1,500 hours over a period of not less than one calendar year, of which at least 75 hours are in direct 1:1 contact with the supervisor;

The successful completion, as defined by the Board, of a nationally recognized examination adopted from the Behavior Analyst Certification Board and approved by the Board, related to the principles and practice of the profession of applied behavior analysis. Thereafter, the individual must maintain his or her active status under the Behavior Analyst Certification Board.

(b) For the first five years after enactment of this legislation in the State/Commonwealth of _____, an applicant who has graduated with a doctoral or master's degree from a regionally accredited university and is a Board Certified Behavior Analyst certificant of the Behavior Analyst Certification Board will be eligible to be granted status as a Licensed Behavior Analyst. Additionally, individuals who hold either a doctoral or master's degree in Behavior Analysis or a related field and can demonstrate competency in applied behavior analysis by virtue of training and experience may petition the Board to be licensed as a behavior analyst. Thereafter, applicants must meet the requirements noted above.

Section 238 (a). The standards to qualify for the designation of Licensed Assistant Behavior Analyst include:

A Bachelor's degree, from a recognized educational program accredited by the Association for Behavior Analysis International Accreditation Board, or from a program at a recognized educational institution approved by the Board and that substantially meets the educational standards of the Association for Behavior Analysis International Accreditation Board. The program must also include an approved course sequence of the Behavior Analyst Certification Board.

The successful completion of an approved practicum or supervised experience in the practice of applied behavior analysis, totaling at least 1,000 hours of supervised experience over a period of not less than two calendar years, of which not less than 150 hours are spent in direct 1:1 contact with the supervisor;

The successful completion, as defined by the Board, of a nationally recognized examination adopted from the Behavior Analyst Certification Board and approved by the Board, related to the principles and practice of the profession of applied behavior analysis. Thereafter, the individual must maintain his or her active status under the Behavior Analyst Certification Board. The status of Licensed Assistant Behavior Analyst is not to be considered an "independent" practitioner. Licensed Assistant Behavior Analysts must secure the direct, face-to-face, supervision of a Licensed Behavior Analyst for no less than 5 hours per month, including the direct observation of the services provided by the practitioner. This seems like an unusual number of hours per month. Why not 4 (1 hr./week) or 5 (1.5 hrs./wk)?

(b) For the first five years of enactment of this legislation in the State/Commonwealth of _____, applicants who have graduated with a Bachelor's degree from a regionally accredited university and are a Board Certified Assistant Behavior Analyst certificant of the Behavior Analyst Certification Board will be eligible to be granted status as a Licensed Assistant Behavior Analyst. Thereafter, applicants must meet the requirements noted above.

Section 239. Each person desiring to obtain a license as a Licensed Behavior Analyst or as a Licensed Assistant Behavior Analyst shall make application to the Board upon such form and in such manner as the Board shall prescribe and shall furnish evidence satisfactory to the Board that such person is of good moral character, including, but not limited to the fact that such applicant has not been convicted of a felony, which shall include a judgment, an admission of guilt or a plea of nolo contendere to such charges, or of an offense under the laws of another jurisdiction, which, if committed in the State/Commonwealth of _____ would be a felony unless the following apply:

(i) At least 10 years have elapsed from the date of conviction.

(ii) The applicant satisfactorily demonstrates to the Board that the applicant has made significant progress in personal rehabilitation since the conviction, so that licensure of the applicant would not be expected to create a substantial risk of harm to the health and safety of the applicant's clients or the public or a substantial risk of further criminal violations.

Section 240. Notwithstanding the provisions of sections 237 and 238, the Board may issue a license without examination to an applicant who presents evidence that he/she has been licensed or certified as an applied behavior analyst by a similar Board of another jurisdiction whose standards, in the opinion of the Board, are not lower than those required in the State/Commonwealth; or that he/she holds a diploma from a nationally recognized board, university, or agency approved by the Board with 5 or more years of practice in applied behavior analysis and provides letters of recommendation.

Section 241. The Board may grant a temporary license for a period not to exceed three years to an applied behavior analyst with prior legal residence outside the State/Commonwealth of _____ provided he/she registers with the Board and practices in consultation with, or under the supervision of, a Licensed Behavior Analyst or possesses qualifications acceptable to the Board, and demonstrates that he/she is enrolled in a recognized educational program accredited by the Association for Behavior Analysis International Accreditation Board that includes an approved course sequence of the Behavior Analyst Certification Board, in preparation for meeting the standards and the requirements noted herein for licensure as an applied behavior analyst in the State/Commonwealth of _____.

Why give a temporary license to someone not licensed anywhere – I fail to see the purpose or logic for this. Also, what about the idea of graduating from, or being enrolled in, a graduate program that is equivalent to, or exceeds, standards of an ABAI Accredited program, as allowed for licensure?

Section 242. Licenses shall be valid for two years and shall be renewed biennially. On or before April 15th every two years the secretary of the Board shall forward to each licensee an application form for renewal. Upon the receipt of the completed form and the renewal fee on or before June 1st, the secretary shall renew the license for two years commencing July 1st. Any application for renewal of a license, which has expired, shall require the payment of a new application fee. Pursuant to the renewal, the applicant shall present to the Board documented evidence of the completion of 36 hours of continuing education programs designed to improve the professional competence of the licensee. Such programs shall be completed during the license period immediately prior to renewal. Such CEUs must be obtained either directly from the Association for Behavior Analysis International, an organization offering CEU activities that is approved by the Association for Behavior Analysis International, the Behavior Analyst Certification Board, or be approved directly by the Board.

I find the inclusion of specific dates to be inappropriate and unduly prescriptive.

Each state will decide its own renewal dates and time frames, as well as determining number of

CEs needed for renewal. For Eg., for psychologist and other professional licenses PA renews licenses every 2 years in November, whereas in CT, licenses are renewed every year in

January.

Section 243. The commissioner of administration shall determine the following fees annually and the fees shall be collected by the Board: (a) application fee; (b) initial license fee; (c) temporary license fee; and (d) biennial renewal fee.

Section 244. Nothing in sections 236 through 252, shall be construed to prevent qualified members of other professions or occupations such as physicians, psychologists, teachers, members of the clergy, authorized Christian Science practitioners, attorneys-at-law, social workers, guidance counselors, clinical counselors, adjustment counselors, speech pathologists, audiologists, occupational therapists, or rehabilitation counselors from doing work of an applied behavior analytic nature consistent with the accepted standards of their respective professions, provided, however, that they do not hold themselves out to the public by any title or description stating or implying that they are applied behavior analysts, that they are providing services included within the scope of practice of applied behavior analysis, or that they are licensed to practice applied behavior analysis.

Section 245. To qualify as a supervisor of approved practicum or supervised experience, an individual shall meet one of the following criteria:

Holds a license as a Licensed Behavior Analyst in the State/Commonwealth of _____, and is a Board Certified Behavior Analyst (BCBA) in good standing with the Behavior Analyst Certification Board.

Or, until three years after the passage of this bill is a Board Certified Behavior Analyst (BCBA) in good standing with the Behavior Analyst Certification Board.

Section 246. Those engaged in the practice of applied behavior analysis within the State/Commonwealth of _____ shall comply with the standards of ethical practice as adopted by both the Association for Behavior Analysis International and the Behavior Analyst Certification Board.

Section 247. As provided in the Individuals with Disabilities Education Act (2004), the State/Commonwealth of _____ Department of Education will evaluate and provide an educational licensure status for licensed applied behavior analysts relative to the provision of special educational services provided within the State/Commonwealth, and shall adopt the standards provided herein as those required to meet this standard.

Section 248. Any person not licensed to practice applied behavior analysis who holds himself/herself out to be an applied behavior analyst by title or who uses the title applied behavior analyst shall be punished by a fine of not more than five hundred dollars, or by imprisonment of not more than three months, or both such fine and imprisonment.

Section 249. The penalties in section 248 shall not apply to:

(a) persons eligible for licensure as an applied behavior analyst under this law and who provide consultative services for a fee for no more than one day a month; or

(b) students of applied behavior analysis currently enrolled in a recognized educational program accredited by the Association for Behavior Analysis International Accreditation Board, interns, or persons preparing for the practice of applied behavior analysis under qualified supervision in such a program; provided, however, that they are designated by such titles as "applied behavior analyst intern", "applied behavior analyst trainee", or other title clearly indicating such training status.

Section 250. The Board shall investigate all complaints relating to the proper practice of applied behavior analysis by any person licensed under sections 236 through 252.

The Board may, after a hearing in accordance with the provisions any relevant law, revoke, suspend or cancel the license, or reprimand, censure, or otherwise discipline an applied behavior analyst licensed under said sections 236 through 252, upon proof satisfactory to a majority of the Board that said applied behavior analyst:

- (a) (a)-Fraudulently procured said license; (There seems to be some circularity here- if the person is not licensed to start with, and is holding him/herself out to be licensed illegally, there is no license to suspend, cancel, revoke, etc. since there is no license to start with). If the person creates a fake license - there is nothing to revoke again. If the person uses fraud to procure a license, this would apply.
- (b) is guilty of an offense against any provision of the laws of the State/Commonwealth relating to the practice of applied behavior analysis or any rule or regulation adopted there under;
- (b) (e)-is guilty of conduct that places into question the licensee's competence to practice, including but not limited to gross misconduct in the practice of applied behavior analysis, practicing fraudulently, beyond its authorized scope, or with gross incompetence or negligence on a particular occasion or negligence on repeated occasions; If the person is practicing fraudulently, then it cannot be said legitimately that such disciplinary action is being take against an "applied behavior analyst." And if this is true, can any legal action be taken against such person who pretends to be an applied behavior analyst by the Board?
- (d) is guilty of practicing applied behavior analysis while the ability to practice was impaired by alcohol, drugs, physical disability, or mental instability;
- (e) is guilty of being habitually intoxicated or being or having been within a reasonable period of time addicted to, dependent on, or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects;
- (f) is guilty of knowingly permitting, aiding, or abetting an unlicensed individual to perform activities requiring a license for purposes of fraud, deception, or personal gain, excluding activities permissible under any provision of laws of the State/Commonwealth or rules or regulations of the Board;
- (g) has been convicted of a criminal offense which reasonably calls into question his/her ability to practice applied behavior analysis; or
- (h) is guilty of violating any rule or regulation of the Board governing the practice of applied behavior analysis.
- (i) is guilty of violating any provision of the ethical standards for applied behavior analysts as adopted by the Association for Behavior Analysis International or the Behavior Analyst Certification Board.

The Board shall, after proper notice and hearing, adopt rules and regulations governing the practice of applied behavior analysis in order to promote the public health, welfare, and safety and to implement the provisions of this section.

No person filing a complaint or reporting or providing information pursuant to this section or assisting the Board at its request in any manner in discharging its duties and functions shall be liable in any cause of action arising out of the receiving of such information and assistance; provided, however, that the person making the complaint or reporting or providing said information or assistance does so in good faith and without malice. Anonymous complaints submitted to the Board of such violations shall not be considered.

If the applied behavior analyst is found not to have violated any of the provisions set forth in this section, the Board shall forthwith order a dismissal of the charges.

Notice in writing of a contemplated revocation or suspension of a license, or the cause therefore in sufficient particularity, and of the date of hearing thereon, shall be sent by registered or certified mail to the licensee at his/her last known address at least fifteen days before the date

of such hearing. The applied behavior analyst against whom a charge is filed shall have a right to appear before the Board in person or by counsel, or both, may produce witnesses and evidence on his/her behalf, and may question witnesses. No license shall be revoked or suspended without such hearing, but the nonappearance of the licensee, after notice, shall not prevent such hearing. All matters upon which the decision is based shall be introduced in evidence at the proceeding. The licensee shall be notified in writing of the Board's decision. The Board may make such rules and regulations as it deems proper for the filing of charges and the conduct of hearings.

After issuing an order or revocation or suspension the Board may also file a petition in equity in the superior court in a county in which the respondent resides or transacts business, or in _____ County, to ensure appropriate injunctive relief to expedite and secure the enforcement of its order, pending the final determination.

Any decision the Board makes pursuant to this section shall be subject to review in superior court in accordance with the provisions of relevant law.

Section 251. After three years from the date of revocation, an application for reinstatement may be made to the Board, which may, upon the affirmative vote of at least five of its members, grant such reinstatement.

Section 252. All communications between a Licensed Behavior Analyst or Licensed Assistant Behavior Analyst and the individuals with whom the licensee engages in the practice of applied behavior analysis are confidential and shall be considered as privileged communications. At the initiation of the professional relationship, the applied behavior analyst shall inform the patient of the following limitations to the confidentiality of their communications. No applied behavior analyst, colleague, agent, or employee of any applied behavior analyst, whether professional, clerical, academic or therapeutic, or a graduate of, or student enrolled in, a degree program in applied behavior analysis at a recognized educational institution as that term is defined in section 236, who is working under the supervision of a Licensed Behavior Analyst, shall disclose any information acquired or revealed in the course of or in connection with the performance of the applied behavior analyst's professional services, including the fact, circumstances, findings, or records of such services, except under the following circumstances:

(a) pursuant to the provisions of any other law;

(b) upon express, written consent of the patient (if competent) or his/her guardian;

(c) upon the need to disclose information which protects the rights and safety of others if:

(1) the patient presents a clear and present danger to himself and refuses explicitly or by his behavior to voluntarily accept further appropriate treatment. In such circumstances, where the applied behavior analyst has a reasonable basis to believe that a patient can be committed to a hospital pursuant to the provisions of any other law, he/she shall have a duty to seek said commitment. The applied behavior analyst may also contact members of the patient's family or other individuals if in the applied behavior analyst's opinion, it would assist in protecting the safety of the patient; or

(2) the patient has communicated to the applied behavior analyst an explicit threat to kill or inflict serious bodily injury upon a reasonably identified person and the patient has the apparent intent and ability to carry out the threat. In such circumstances, the applied behavior analyst shall have a duty to take reasonable precautions. An applied behavior analyst shall be deemed to have taken reasonable precautions if said applied behavior analyst makes reasonable efforts to take one or more of the following actions:

(a) communicates a threat of death or serious bodily injury to a reasonably identified person;

(b) notifies an appropriate law enforcement agency in the vicinity where the patient or any potential victim resides;

(c) arranges for the patient to be hospitalized voluntarily;

(3) the patient has a history of physical violence that is known to the applied behavior analyst and the applied behavior analyst has a reasonable basis to believe that there is a clear and present danger that the patient will attempt to kill or inflict serious bodily injury upon a reasonably identified person. In such circumstances the applied behavior analyst shall have a duty to take reasonable precautions. An applied behavior analyst shall be deemed to have taken reasonable precautions if said applied behavior analyst makes reasonable efforts to take one or more of the following actions:

(a) communicates a threat of death or serious bodily injury to the reasonably identified person;

(b) notifies an appropriate law enforcement agency in the vicinity where the patient or any potential victim resides;

(c) arranges for his patient to be hospitalized voluntarily;

(4) in order to collect amounts owed by the patient for professional services rendered by the applied behavior analyst or his/her employees; provided, however, that the applied behavior analyst may only disclose the nature of services provided, the dates of services, the amount due for services, and other relevant financial information; provided, further, that if the patient raises as a defense to said action substantive assertions concerning the competence of the applied behavior analyst or the quality of the services provided, the applied behavior analyst may disclose whatever information is necessary to rebut such assertions; or

(5) in such other situations as shall be defined in the rules and regulations of the Board.

The applied behavior analyst shall only disclose that information which is essential in order to protect the rights and safety of others. Furthermore, nothing contained herein shall require an applied behavior analyst to take any action that, in the exercise of reasonable professional judgment, would endanger him or increase the danger to a potential victim or victims.

No provision of this section shall be construed to prevent a nonprofit hospital service or medical service corporation from inspecting and copying, in the ordinary course of determining eligibility for or entitlement to benefits, any and all records relating to diagnosis, treatment, or other services provided to any person, including a minor or incompetent, for which coverage, benefit, or reimbursement is claimed, so long as the policy or certificate under which the claim is made provides that such access to such records is permitted. No provision of this section shall be construed to prevent access to any such records in connection with any coordination of benefits, subrogation, workers' compensation, peer review, utilization review, or benefit management procedures applied and implemented in good faith.

This section, 252, seems unnecessary as these conditions of confidentiality are already covered in federal law under HIPAA, and are also covered in the BACB's Guidelines for Responsible Conduct for behavior analysts, and also should be included in ABAI's ethical standards when they are developed. Perhaps a reference too these standards and federal HIPAA law would suffice pertaining to patient records and confidentiality, etc.?

M. Lumb

Connecticut School Attorneys Council

do C.A.B.E.
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TESTIMONY

On behalf of the Connecticut Council of School Attorneys (COSA), I would like to speak in favor of Raised Bill 5425, Section 3, which would amend Connecticut General Statutes § 10-76h(d)(1) to place the burden of proof on the party requesting the hearing in a special education dispute. First, it is worth noting that this would effectively place the burden of proof on the school district in any case where the school district initiates the hearing request, in addition to placing the burden on the parents, guardians, or DCF in cases where the parent or guardian initiates a hearing. The number of cases in which school districts initiate hearings is not an overwhelming percentage, I am sure, but it does impact those cases in which the school district is required to initiate a hearing under the Individuals with Disabilities Education Act (IDEA) to defend an evaluation when it makes a decision to deny a parent's request for an independent educational evaluation (IEE) or where, as required by state law, the school district's recommendation is for an out-of-district placement for a child with a disability, but the parent or guardian does not consent to such a placement. The burden of proof would also continue to reside with the school district in cases where the district initiates a hearing to obtain a hearing officer's order changing the student's placement for a period of 45 school days in disciplinary cases where the student with a disability has violated the code of conduct and the violation is deemed a manifestation of the child's disability, but the district contends that the student poses a danger to students or staff at the school.

According to extensive research conducted by the Connecticut Association of Boards of Education (CABE), Connecticut is one of only 2 states in the nation that have not adopted the IDEA preference for placing the burden of proof on the moving party, following the United States Supreme Court decision in *Schaffer v. Weast* in 2005. Forty-eight other states either had that as the rule prior to the Supreme Court decision or adopted that rule following the Supreme Court's decision. We have not heard reports coming out of these other states that parents are at any significant disadvantage following the adoption of that rule.

Casting a vote in favor of this provision does not cast a vote against children with disabilities or parents of children with disabilities. This is about the proper allocation of the burden of proof in American jurisprudence. As noted by the United States Supreme Court, in the absence of some compelling reason, the burden of proof is placed on the party who brings the action to prove his or her case. Each of the reasons advanced by the parent advocacy community, most notably that the information is in the hands of the school district and therefore it is "only fair" that the school district hold the burden of proof, has been rejected by the United States Supreme Court. This argument was rejected because parents have the right to obtain copies of all documentation associated with their child's educational program, and they have the right to an independent educational evaluation of the child by an independent expert, at public expense. That expert, if he or she renders an opinion in favor of the position of the parent, can be called by the parent as a witness in any subsequent due process hearing, and if the parent prevails in the hearing, payment for the witness' expert testimony is a compensable cost paid by the school district as part of the prevailing party's attorney's fees and costs. In our experience, there is no shortage of evaluators ready, willing, and able to provide this service to parents and children with disabilities in this state.

Casting a vote in favor of this provision is a vote in favor of public education, and in favor of Connecticut's school districts. The current system imposing the burden of proof on the school district in every case leads to longer due process hearings and higher costs in every case that proceeds to a hearing. Knowing that it has the burden of proof, the school district must almost always trot out the full panoply of witnesses to defend every aspect of a child's Individualized Educational Program (IEP), often in response to a broad allegation that the child's program "does not offer a free appropriate public education". There are often between five and ten people in each case involved in providing services to the child, and the school district must present testimony from each witness, subject to cross examination by parent counsel each time. Full due process hearings that include testimony from parents, parent experts, and school district witnesses often take up 10-12 days of hearings over the course of many months. Some hearings have exceeded 20 days and have lasted well over a year. While these hearings are going on, district administrators and staff are diverted from the business of educating not only the student at issue in the hearing, but many other students as well. This has an impact on the quality of the educational programming provided to other children with and without disabilities. The Supreme Court expressed dismay that in the information presented to them, a due process hearing could cost \$8,000 to \$12,000. We estimate the average cost of a due process hearing in Connecticut at many times that number; the district's legal fees alone are often in the range of \$20,000 to \$30,000, and the parents' legal fees are usually more in the range of \$50,000 to \$75,000. Most districts can little afford the significant resources needed to adequately defend these cases, both in terms of attorney's fees and staff time, resources, and attention. While the allocation of the burden of proof is certainly not the only factor in this result, it is a significant contributing factor. Diverting resources into the hearing process necessarily diverts those resources away from improving instruction, paying teachers, providing professional development, training teachers in

newer and more effective methods of instruction, and improving outcomes for all students. In these challenging economic times, most school districts in the state would have to make a choice between hiring another teacher (or saving a teacher's job), and setting aside money in the budget to defend a due process hearing, especially factoring in the high costs of potentially having to pay the parent's attorney should the family prevail in the hearing.

The monumental costs associated with special education litigation have another, certainly unintended consequence in this state. Settlements of special education disputes increasing shift education funding dollars away from public education to private schools, where parents who are able to commit significant resources to private school education are able to unilaterally place children, and then sue the school district for reimbursement of the costs. Even if the school district believes that it has provided good services to the child at issue, the district often chooses the less expensive path of settlement, rather than the expensive and resource-consuming path of litigation. The dollars for these settlements come out of each town's education budget, and go directly to funding expensive private schools, many of which are not even approved by the state for the purpose of providing special education programming. If the school district agrees to make the placement advocated by the parents through the IEP, then part of the cost is passed back to the state to fund through the excess cost reimbursement grant. If the Committee is looking for a concrete step to take in the direction of limiting or reducing the excess cost reimbursement budget, this is one such step that will help to realign the hearing process and bring such costs under control.

Shifting the burden of proof to the school district in every case in Connecticut has had another, perhaps unintended, consequence that was noted by the Supreme Court in its decision. It intensifies what is already an adversarial process, making it the presumption and the prevailing attitude that the teachers are not providing adequate services, that their expertise is suspect and

subject to challenge by experts outside the school system. One hearing officer's decision some years ago reflected this back to the parties by stating that the district, who had submitted the testimony of its teaching staff in support of its program, "presented no experts" while the parents had presented "expert testimony". The world of special education is increasingly an emotional battlefield, where every person on the field believes that he or she represents the position that is in the best interests of the children. Shifting the burden of proof away from the party bringing the hearing request to the school district in every case only intensifies the adversarial nature of this process by immediately putting the teachers in a defensive posture. This is not where you want teachers to be when you want them to put forth their best efforts on behalf of all children. As pointed out by the Supreme Court, this runs counter to the presumption in the IDEA itself that our teachers are the experts who develop programs for children with disabilities in cooperation with parents and who should have our confidence. The Committee can recognize the expertise and the important contributions made by Connecticut's public school teachers and related services staff by passing this change to the statute, which would return the burden of proof issue to its proper balance. This is a vote in favor of public education.

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STEVEN J. ADAMOWSKI
SUPERINTENDENT OF SCHOOLS

MIRIAM MORALES-TAYLOR
ASSISTANT SUPERINTENDENT

Testimony of : Miriam Morales- Taylor
In opposition to: Bill Number 5425

EDUCATION COMMITTEE

OPENING CHOICE: Honorable Chairmen, Members of the Committee:

TEXT OF TESTIMONY / STATEMENT OF POSITION:

My name is Miriam Morales – Taylor, Assistant Superintendent for Learning Support Services for the city of Hartford. I have been in this position for the past two years. I oversee the Special Education Department; I am contacting you in opposition of BILL NUMBER 5425 and Act Concerning Special Education.

- Any decision regarding special education services, in this case, applied behavior analysis, should be determined by the Planning and Placement Team (PPT) in light of individual student needs;
- Requiring the Hartford Schools to be responsible for the education of its students moving to other districts will place a financial and documentation burden on the district due to the transient nature of the population. Students move not solely to neighboring towns, but also beyond the capital region and out of state.

ENDING:

Thank you for the opportunity to communicate with you today on this important issue and I ask that you oppose BILL NUMBER 5425.

Office of the Superintendent
960 Main Street, Hartford, CT 06103
Phone: (860) 695-8401 • Fax: (860) 722-8502
www.hartfordschools.org

5425

Belanger, N

Law Office of Nora A. Belanger, L.L.C
10 Wall Street
Norwalk, CT 06850
TEL (203) 854-8597
FAX (203) 854-5344

March 8, 2010

Attention: Sen. Thomas P. Gaffey and Rep. Andrew M. Fleischmann

Re: Raised H.B. No. 5425, Session Year 2010
Emailed to chris.calabrese@cga.ct.gov and also sent via first class mail

Dear Sen. Gaffey, Rep. Fleischmann, and the Education Committee members,

I am a an attorney in Connecticut concentrating solely on special education and disability rights law, as well as a prior special education teacher. Please accept this letter as testimony for my support of Section 2, and opposition to Section 3 of H.B. No. 5425: AN ACT CONCERNING SPECIAL EDUCATION. I will address both issues raised in this bill and note the grave impact they will have on students with disabilities in Connecticut, as follows:

Section 2 of H.B. No. 5425

The IDEA mandates that public schools use evidence based practices for students receiving special education services. Studies show that applied behavior analysis (ABA) improves outcomes of individuals with autism. It is reasonable to conclude that it will affect the integrity of these programs if we do not insure delivery by trained and qualified staff. Hence, the individuals who use ABA with our students require proper training.

Section 3 of H.B. No. 5425

The Burden of Proof must not be changed. Connecticut must keep the burden of proof on the school district, the party who is obliged to provide a free

and appropriate public education. The school district has control of the student's educational record and controls the flow of information between the school and the parent. If the burden of proof shifts it will allow the school districts to stop the communication and documentation that the parent requires to make their case. The imbalance of power between the district and the parents supports placing the burden of proof with the school district based on the fundamental principles of fairness. Practically speaking, it is almost always the parents who initiate due process because the school district is unable or unwilling to provide the necessary services. A change in this law would place an onerous burden on families to prove that the program is not appropriate, and shifts the balance in an already unbalanced process.

Thank you very much for your consideration of this point of view, which I believe represents that of my clients and fellow advocates of students with disabilities in Connecticut. I implore you not to change the current regulations in Connecticut in connection with burden of proof and ask that properly trained staff is required to work with students with Autism.

Respectfully yours,

Nora A. Belanger, Esq.

Law Office of Nora A. Belanger

10 Wall Street

Norwalk, CT. 06850

5421

Fields, P

Education Committee
Room 3100, Legislative Office Building
Hartford, CT 06106

Dear Senator Gaffey and members of the Education Committee,

I would like to address issues with raised Bill 5425 "An Act Concerning Special Education."

There is in section 3 (d)(1) the following statement " In making a determination as to the issues in dispute, the hearing officer or board shall review the evidence presented in the hearing with the burden of proof on the party requesting the hearing."

This statement would make the burden of proof fall on the parents. As an Arc representative I do not feel this would be beneficial to any of the families or the children involved in special education.

The PPT process can be very intimidating to families. I know my aunt who was an Executive Director of a non profit and a very forceful person to contend with was very fearful and intimidated in this process when she attended for her daughter who had severe disabilities and behavioral issues.

When you have a room full of titled professionals that are powerfully stating that they know what is best for your child it is very overwhelming to parents. These professionals have time and training, and education to present very powerful persuasive arguments that most parents do not have the training or the education to compete with. It is a difficult process for parents to participate in to begin with but then to be charged with obtaining and possibly paying for expensive examinations and/or expert opinion seems very burdensome.

It will not be in the best interest of the child and could possibly be very detrimental in the long run. Failure to provide appropriate special education supports will cause a greater issue in the regular classrooms and possibly further disruption for all students. Please consider amending this bill to remove the burden of proof from the parents. Thank you for keeping the best interest of children with disabilities in the forefront of your decisions.

Sincerely,

Pamela Fields
Executive Director
Arc of Meriden Wallingford, Inc.
200 Research Parkway
Meriden, CT 06450
203.238.8362

5425

000883
Murphy, P

Patrick & Maria Murphy
274 Sunrise Hill Lane
Norwalk, CT 06861

March 8, 2010

By email: chris.calabrese@cga.ct.gov

Thomas P. Gaffey, Co-Chair
Education Committee
Room 3100, Legislative Office Building
Hartford, CT 06106

Andrew M. Fleishmann, Co-Chair
Education Committee
Room 3100, Legislative Office Building
Hartford, CT 06106

John W. Fonfara, Vice Chair
Education Committee
Room 3100, Legislative Office Building
Hartford, CT 06106

Tom Reynolds, Vice Chair
Education Committee
Room 3100, Legislative Office Building
Hartford, CT 06106

Bob Duff
Room 2400, Legislative Office Building
Hartford, CT 06106

Regarding: Bill # HB 5425
An act concerning special education

Mr. Gaffey, Mr. Fleishmann, Mr. Fonfara, Mr. Reynolds and Mr. Duff:

My name is Maria Murphy. I currently reside in Norwalk, CT. I am a parent of a child with autism. My 6 1/2 year old daughter was diagnosed with Autism from Boston's Children's Hospital when she was 2 years old. After receiving Birth to Three, we attempted to place our daughter in our district preschool located in Norwalk, CT. The elementary school staff did not have a therapist or teacher who could administer certified Applied Behavioral Analysis ("ABA"). The district was unable to provide an appropriate education to our child or any other child with autism. Due to the districts inability to properly administer certified ABA, we unilaterally placed her at Connecticut Center for Child Development ("CCCD") in Milford, CT. CCCD is a specialized school made up of certified ABA staff who provides 1:1 appropriate education to children with autism.

After just 1 year at CCCD we decided to place our daughter back in district when she was 4 years old. Myself, my husband and the CCCD staff believed she needed to be among her typical peers. This of course, brought up the important question of who will run a certified ABA program for her once she was placed back in district. Norwalk's Director of Special Education, Janie Friedlander, attempted to have us use (1) Sheila Flannigan from Benhaven (who at the time was not certified), and then (2) John Burke from The Hope Center (he too is not certified).

The district then offered up Stacy Lore from Spectrum Kids. Stacy was already working in the district when she was introduced to my family. Stacy became our daughter's certified ABA Consultant in December 2007 on behalf of Norwalk Public Schools. Stacy ran our daughter's ABA program as well as trained Brooke's 1:1 paraprofessional until August 2008.

Other parents in the Norwalk School District who were using Stacy for their children's ABA programming in the school were also using her for the home programming component. These parents became suspicious of Stacy's abilities and techniques during home component sessions. On many

occasions Stacy did not show up to administer the home programming component. Their suspicion was confirmed when they themselves investigated Stacy's background. These parents found out that (i) Stacy did not hold an ABA certification from the BACB as stated on her resume, (ii) Stacy did not graduate from NYU with a PhD or Master's Degree, as stated on her resume and (iii) Stacy did not work for who she claimed, again, as stated on her resume.

We asked ourselves, how can the Norwalk School District hire an individual who committed fraud on their resume? Did the Norwalk School District NOT do a background check? Is that possible!

When digging deeper we realized that not only did Stacy Lore lie on her resume, she also received money from both the Norwalk School District and parents for therapy that was never administered. One parent even found a bill sent to the district for a week that her family was out of town. Stacy got paid for all of the bills she submitted.

After Stacy Lore my daughter went months without a certified ABA Therapist.

To this day I am subsidizing her therapy out of my pocket. I pay the following each week: (i) \$175 for 45 minutes for certified ABA therapy (this is NOT covered by insurance, due to the fact that SB 301, Public Act No. 09-115 does not cover an employer that self-insures) (ii) \$75 + \$20 for 30 minutes of speech from a licensed speech pathologist (\$20 is co-pay) (iii) \$117 for 45 minutes of OT. That comes to \$20,124 I am paying out of my pocket each year due to the districts lack of certified professionals.

I believe it is essential to include Section 2 within HB 5425. My family is not the only one who will benefit from HB 5425. Sure there are other choices, but time and time again, newspaper article after newspaper article, nightly news story after news story you hear of how certified ABA has given these children a chance. It is the ONLY scientific proven therapy to work with children on the spectrum. It is tremendously essential that these children daily certified ABA therapy. If you have not done so, I encourage you to go and see certified ABA administered to these children. It will make quite an impression on you. Please do the right thing and include Section 2 within HB 5425.

Section 3, however, is an unwarranted, biased provision. Not to mention, how am I to afford a lawyer when I'm already paying out over \$20,000 in unnecessary bills? Do NOT include Section 3 within this Bill.

To reiterate my closing comments from my testimony: The constituents, parents, tax payers of this state URGE YOU to SWIFTLY pass Section 2 of Bill 5425.

Thank you.

Kind regards,

Maria Murphy

5425

Ortiz, P

Dr. Paula Torres Ortiz
54 Taylor Ave
Norwalk, CT 06854-2043

March 5, 2010

Dear Representative Fleischmann:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism.

But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Paula Torres Ortiz

5425

Inferra, P

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee,

I am writing to object to the language in Proposed Bill #HB 5425. The language states that the purpose of the bill is "to establish that the burden of proof lies with the party requesting a special education hearing;" The current law states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP). The current law makes sense because the school districts are in control of the records, staff, and the program. The proposed change would be a huge burden on parents, like myself, who have children with disabilities in Connecticut. Changing the burden of proof would make it excessively costly and almost impossible for parents of students receiving special education services to have a fair hearing with any reasonable chance of prevailing.

Thank you,

Penny Inferrera
7 Pratt Lane
New Milford, CT 06776

5425

lassogna, R

Dear Education Committee Members,

It is my understanding that the Education Committee will conduct a hearing today on HB #5425. As you are aware, the key aspect of this bill revolves around the proposal to change the burden of proof language for special education hearings.

Of course, respective districts must meet the unique needs of our special education children; however, Trumbull firmly believes that the "playing field" will be leveled by the passage of this bill, particularly since the new regulations will be consistent with the federal legal practice of placing the burden of proof on the party requesting the hearing. Also of importance, school districts would financially save budget dollars, a key factor in these difficult economic times.

Thank you for considering this matter.

Ralph M. Iassogna
Superintendent

Rita Ciarmella on behalf of Ralph Iassogna
Office of the Superintendent
Trumbull Public Schools
6254 Main Street
Trumbull, Connecticut 06611
(203) 452-4301

5425

Joslin, R

HB 5425:

Support Section 2:

I am writing to ask that you support Section 2 of Raised Bill 5425 which will require public schools to hire Board Certified Behavior Analysts (BCBA), Board Certified Assistant Behavior Analysts working under the supervision of a BCBA, or other professional licensed or certified by either the State Department of Education or Department of Public Health whose scope of practice includes behavior analysis when Behavior Analysis is part of an Individualized Education Plan (IEP).

Simply put, this bill will ensure that our children receive behavior analysis from qualified professionals, only when a child in our public school system has behavior analysis as part of their individualized education plan (IEP). Said services must be provided by someone who is licensed by the Department of Health or certified by the State Department of Education whose scope of practice includes behavior analysis or by a Board Certified Behavior Analyst (BCBA) or a Board Certified Assistant Behavior Analyst supervised by a BCBA.

This bill does not require that behavior analysis be part of a child's IEP but that it must be provided by a qualified person. BCBA is recognized credential in many states. The Behavior Analyst Certification Board, Inc. (BACB®) is a nonprofit corporation which oversees this certification. The Behavior Analyst Certification Board's credentialing programs are accredited by the National Council for Certifying Agencies in Washington, DC. It is important that school districts have clear direction from the State who meets the qualifications necessary to provide these services. Hiring people who are not qualified to provide these services put school districts at risk of parent lawsuits.

Oppose Section 3:

I am writing to object to Section 3 of Raised Bill #HB 5425 that establishes a statutory burden of proof lies with the party requesting a special education hearing. Given that the vast majority of actions are initiated by parents of disabled children, this change is in effect shifting the burden to these parents. The current law is well settled and states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP). The current law makes good sense because the school districts are in control of the records, staff, the experts, and have unlimited access to all the information about the program they are providing. Further, the districts can use their own staff as expert witnesses. In contrast, the parents have limited access to school programs, observations and are not educational experts. As it stands currently there is an imbalance of power; the districts are in a far better position with great numbers of staff and records to defend the programs they deliver vis-à-vis the the parents, who have limited resources given the need to raise their disabled child.

How would the proposed change affect parents who have children with disabilities in Connecticut? It stacks the deck more heavily in favor of school districts. Historically, the majority of hearings reviewing the delivery of special education services to students with disabilities, our most vulnerable population, are already decided in favor of the school districts. This bill proposes a drastic 180-degree change of the burden of proof in special education due process cases. It would make due process hearings excessively costly and would be an insurmountable challenge for parents, creating a situation in which the families could not have a fair hearing with any reasonable chance of prevailing.

Note that the Office of Protection and Advocacy for Persons with Disabilities opposes this section. I draw your attention to their testimony on identical legislation in 2009 HB 1142 dated March 23, 2009.

Last, any argument that this change is warranted by a Supreme Court case Shaeffer v Weast is specious. The holding in this case does not require that states change the burden of the proof. It is entirely appropriate under the law to leave the status quo unchanged.

Thank you for your consideration.

Richard Joslin
63 Carriage Drive
Southport CT 06890

Lauria, R

5425

Roberta E. Lauria
74 Dorman Road
New Britain, CT 06053

March 5, 2010

Education Committee
Legislative Office Building
Room 5100
300 Capital Avenue
Hartford, CT 06106

Dear Senator DeFronzo, Representative Tercyak, and Members of the Education Committee:

Re: HB5425—AN ACT CONCERNING SPECIAL EDUCATION

I am writing to you in opposition of Proposed Bill #HB 5425 that requires that the burden of proof lies with the party requesting the special education hearing. This is usually the parents or guardians of the special education child.

The current law states that the burden of proof is the responsibility of the school district to prove that it has provided a "Free, Appropriate, Public Education" through the Individual Education Plan or IEP.

The current law we have in Connecticut works well because school districts have the records and staff and well as experts that can go to for assistance. This includes expert witnesses. Many schools already have plenty of access to information about the programs they provide to the various needs of special education students. If there is the unlikely situation that they do not have it, they know area towns that do.

As the parent of a child classified as special needs, I can tell you from experience the majority of us do not have these same options and resources as the schools. Many of the parents also do not have the financial resources to even bring these experts into the process to help our child. We also do not know where to even begin to look. I am one of them. In my school district there are also many parents who do not speak English and would not be able to even begin to know how to deal with this process to best help their child. There is no way a parent would be able to have a fair hearing in a process like this.

Allowing this Bill would essentially deny a special education child to get the proper help they need so that they can grow and learn to be a productive member of society.

Thank you for your time and I appreciate you opposition to Proposed Bill #HB 5425.

Sincerely,

Roberta E. Lauria

Perske, R

5425

TO: The Members of the Education Committee (c/o Chris Calabrese)

REGARDING: Raised Bill No. 5425 – or HB 5425

SPECIFICALLY: The Passage that would shift the burden of proof in hearings that seek a "Free, Appropriate Public Education (FAPE)" onto the family of a child and away from the school district.

I am Robert Perske the author of 18 books on securing positive attitudes toward persons with disabilities in our society. Among them are *Hope for the Families* (1981) and *New Life in the Neighborhood* (1980). I also assisted in producing a Report to President Nixon, *Mental Retardation: Century of Decision* (1976) and full authorship for another: Report to President Carter. (*Mental Retardation: The Leading Edge, Service Programs that Work* (1978).

I have focused on this issue for 51 years. During that time the fairness and decency toward persons with disabilities led to a wonderful upward growth. We, in Connecticut, have moved from merely shoving persons with disabilities out of sight and out of mind in institutions – until the present. when they are slowly being admitted in their own neighborhood schools. During all of these years, I have watched how parents, workers in the field and citizen advocates have had to push a gigantic boulder up a very large hill. They did it in spite of formidable opposition.

But now, if the school districts do not have to produce the burden of proof in due process hearings, and they can shift it on the parents, that would be a terrible impediment to the evolving standard of decency that marks the progress of our maturing society.

Voting for this passage would amount to a terrible step backward for persons with disabilities and their parents.

**Robert Perske
159 Hollow Tree Ridge Road
Darien, CT 06820
Rperske@aol.com
www.robertperske.com**

R. Kaplan



Advocating for teachers
and public education

**Connecticut Education
Association**

Governance

Philip Apruzzese, President
Sheila Cohen, Vice President
Cheryl Prevost, Secretary
Jeff Leake, Treasurer
Maureen Honan, NEA Director
Tom Nicholas, NEA Director

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Dr. John Yrchik
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Fax: 860-725-6328
www.cea.org

Affiliated with the
National Education
Association

***Testimony of Robyn Kaplan Cho, CEA
Before the Education Committee – March 8, 2010***

***Raised Bill No. 5425
An Act Concerning Special Education***

My name is Robyn Kaplan-Cho and I am submitting this written testimony on behalf of the Connecticut Education Association (CEA) where I am on staff and responsible for educating our members on issues related to special education laws.

I would like to first comment on Section 1 of the bill which reconstitutes the State Advisory Council (SAC) on special education. While we support consolidating the over thirty-six slots currently required by the statute, we do have a concern related to teacher representation on the SAC. Under the current law, there are two designated slots for teachers - one for a regular education teacher appointed by the Majority Leader of the Senate and one for a special education teacher appointed by the Minority Leader of the House. Raised Bill No. 5425 reduces the two teacher slots to just one slot to be filled by any public school teacher.

Given the pivotal role that teachers, both regular and special education, play in the education of students with disabilities, it seems vital to ensure that each group of teachers continues to be represented on the SAC. This legislation does reduce the total number of appointees but it would still remain a rather large Council with at least twenty-nine (29) members. So continuing to include two slots specifically for a regular and a special education teacher would be proportionately fair and not unduly burdensome.

Finally, Section 3 of the bill would shift the burden of proof in special education hearings from the school district to the party requesting the hearing, consistent with the traditional rule in civil cases that the party initiating the legal action bears the burden of proof. Given that Connecticut's current rule is so out of line with most other states and with the U.S. Supreme Court decision in *Schaffer v. Weast*, the CEA believes that this issue clearly requires further exploration.

Thank you for your consideration.

R. Bunker

TESTIMONY TO THE EDUCATION COMMITTEE CONCERNING RAISED BILL
5425

March 8, 2010

Submitted by Roger E. Bunker, Esq. and Judith S. Bunker of Bloomfield, CT

As parents of a child with a specific learning disability and as professionals with over 40 years teaching and representing children with educational disabilities, we urge the rejection of Section 3(d)(1) of this Bill concerning the placement of the burden of proof on the party seeking an educational due process hearing. As background, Roger is an attorney with 15 years of experience representing children and parents in special education matters, including due process. Many, if not most of these representations have been on a *pro bono* or reduced rate basis as most families are unable to pay the full costs of representation. For over 30 years, Judith was a teacher of children with severe special educational needs for CREC and, most recently as an advocate for them in obtaining the special education services they need. Both are currently appointed by the State Department of Education (SDE) as Surrogate Parents to represent children with special educational needs who are in the care of the State Department of Children and Families.

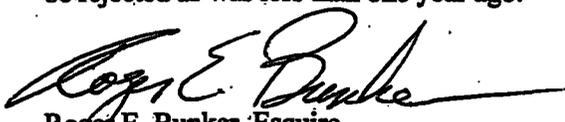
Section 3 of Bill 5425, if adopted, would shift the burden of proof in all issues to the party requesting an educational administrative hearing. In most educational due process hearings, the party requesting the hearing is a parent seeking an appropriate educational plan and placement for the child. The reason why the parent usually requests a hearing is that when schools and parents disagree about the appropriate educational plan for the student, the plan desired by the school is implemented unless the parent requests a hearing. Currently under Connecticut law, with one exception, the burden of proof is already placed on the party seeking the hearing. The one exception, as stated in State Board of Education Regulations Section 10-76h-14(a) is that "the public agency has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency." Thus, the sole aim of Section 3 of Raised Bill 5425 is to force the parent to prove that the school's plan is not appropriate for the student. As the school already has this burden, it is not a new mandate or expense for the school, but rather for the parents if it is shifted. As discussed below, school districts already have the staff, records, skills, training, and other resources needed to bear this burden whereas the parents do not. Therefore, a school is in a better position to show the appropriateness of its program and placement than a parent is to show their inappropriateness.

Currently, Connecticut is in full compliance with federal law and regulations. The United States Supreme Court decision in *Schaeffer v. Weast* applies only to states who have not addressed the burden of proof issue. The Court recognized the importance of state decisions in educational matters. After this decision, the Commissioner of Education for Connecticut issued a Circular Letter stating that "the standard in Connecticut articulates a valid state policy that school districts are in a better position to defend the appropriateness of an IEP [Individualized Educational Plan]." Shifting the burden to the parents would overturn settled Connecticut policy on this matter. It is noteworthy that the SDE's pending revisions to its regulations, do not include shifting this burden. According to the SDE's statistics, under the present regulations, fewer than

40 cases per year go to a full hearing. Therefore, on average, a school district would only go to a full hearing once every four years. Currently, schools win 67%% of due process decisions and parent less than 30%, with the balance split decisions. In our experience many parents are unable to pursue meritorious claims because they lack the financial means to do so. Unfairly imposing the burden of proving the inappropriateness of the schools' program and placement will further handicap parents. School districts are protected from frivolous complaints as the federal Individuals with Disabilities Education Act (IDEA) permits them to recover their legal fees in such cases from the parents and/or attorneys who file them.

The primary reason that Connecticut has placed the burden of proof on the appropriateness of the school's program and placement on the schools is that, as stated in IDEA, it is the responsibility of the schools to provide students with a free appropriate public education. Parents provide a watchdog function to ensure that state and federal funds are properly used to provide these students with an appropriate education. A school district's staff contains the trained teachers, administrators and other professionals (psychologists; social workers; physical, occupational, speech and language therapists; and reading consultants, etc.) who are experienced in assessing students' needs and designing and implementing educational plans to address those needs. Moreover, schools control the educational records, administer and run the planning meetings, and prepare the documentation of what is discussed and decided at the meetings. In theory, under IDEA, parents are equal participants in decision-making, have the rights to access to all records and to obtain independent assessments of their children. Unfortunately, the reality is that most parents we have assisted are unaware of these rights and are ill-prepared to exercise them. In addition, at educational planning meetings where they are vastly outnumbered by school staff who often speak in acronyms and phrases that parents do not understand, they are intimidated and confused. This imbalance of knowledge, education, status and power is especially unfair to undereducated parents. Moreover, most parents lack the means to hire the expertise needed to understand the schools' assessments and to determine whether or not the schools' proposed programs and placements are appropriate. Such expenses are not reimbursable even if the parents win on all the issues presented at a due process hearing. On the other hand, the schools already have the experts on their payroll and have the resources to confront parents with skilled attorneys at hearings, which make the process even more unequal. Usually, in educational disagreements, hearing officers presume educators to be more knowledgeable than parents about a student's needs. Moreover, the districts either have on staff or are able to hire the experts to whom hearing officers give deference. Unfortunately, financial considerations often provide school districts with a perverse incentive not to provide the services and supports necessary for a special education student to make meaningful educational progress.

In view of the preceding information, we request that this shifting of the burden of proof be rejected as was less than one year ago.


Roger E. Bunker, Esquire
Surrogate Parent


Judith S. Bunker
Surrogate Parent

5425

Letso, R

Roger Letso
93 Poverty Hollow Road
Newtown, CT 06470

March 8, 2010

Thomas P. Gaffey, Co-Chair
Andrew M. Fleishmann, Co-Chair
Education Committee
Room 3100, Legislative Office Building
Hartford, Ct 06106

RE: Testimony regarding House Bill 5425
Section 2, House Bill 5425. Please support.
Section 3, House Bill 5425. Please oppose.

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism. But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Please support Section 2 of HB 5425.

In addition I ask that you oppose Section 3 of HB5425 of the same act. It is extremely important to the children of Connecticut that this Section 3 of the bill be stricken from the bill.

Currently, Connecticut law requires that school districts prove that they offered a child with disabilities an appropriate program if the dispute proceeds to a Due Process Hearing. Section 3 of this Bill proposes changing this law, and placing the burden of proof with the party who asked for the hearing, which in almost all cases is the parent.

If section 3 is passed, the burden of proof would in fact shift the burden of proof in Due Process Hearings from the School districts that have many resources including retained legal council and the control of information, to the parents of children with a learning disability, most of which do not have the means for attaining adequate legal services, nor the expertise for gathering important educational, psychological and procedural information that is important in preparing or presenting a case in a due process hearing.

By changing the onus of proof to the parents, this bill removes the school district's responsibility to both provide, document and defend the appropriateness of their programs for the child with a learning handicap. Instead it would charge the parents with a much more lengthy, challenging and expensive task of evaluating the school districts program(s) or lack thereof. Parents do not have the resources to fight these battles, and their handicapped children are further damaged by the delay in getting the services they need. These citizens (both the children and the parents) need protection in this process.

Please oppose Section 3 of HB 5425.

Thank you for your consideration.

Sincerely,

Roger Letso,
93 Poverty Hollow Road
Newtown, CT 06470
Home phone (203) 426-0449
Work phone (203) 882-8810, ext. 311
Email address: rletso@cccinc.org

S
Huck

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee,

I am writing to object to the provision in Proposed Bill #HB 5425 that establishes that the burden of proof lies with the party requesting a special education hearing. The current law states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP). The current law reflects well-settled Connecticut policy. The current law makes good sense because the school districts are in control of the records, staff, the experts, and have unlimited access to all the information about the program they are providing. They can use their own staff as expert witnesses, and school budgets that include reimbursement for attorney fees.

Compare the schools to the parents, who often can't even understand the jargon used at the IEP meetings. This is a huge imbalance of power; the districts are in a far better position to defend the programs they deliver, as opposed to the parent to prove that the program is inappropriate. How would the proposed change affect parents who have children with disabilities in Connecticut? It stacks the deck more heavily in favor of school districts.

Historically, the majority of hearings reviewing the delivery of special education services to students with disabilities, our most vulnerable population, are already decided in favor of the school districts. This bill proposes a drastic 180 degree change of the burden of proof in special education due process cases. It would make due process hearings excessively costly and would be an insurmountable challenge for parents, creating a situation in which the families could not have a fair hearing with any reasonable chance of prevailing.

Thank you.

Sincerely,

Sally Huck
146 Four Mile River Road
Old Lyme, CT 06371
sahuck@comcast.net

5425

Simpson, S

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee,

I am writing to object to the provision in Proposed Bill #HB 5425 that establishes that the burden of proof lies with the party requesting a special education hearing. The current law states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP). The current law reflects well-settled Connecticut policy. The current law makes good sense because the school districts are in control of the records, staff, the experts, and have unlimited access to all the information about the program they are providing. They can use their own staff as expert witnesses. Compare the schools to the parents, who often can't even understand the jargon used at the IEP meetings. This is a huge imbalance of power; the districts are in a far better position to defend the programs they deliver, as opposed to the parent to prove that the program is inappropriate. How would the proposed change affect parents who have children with disabilities in Connecticut? It stacks the deck more heavily in favor of school districts.

Historically, the majority of hearings reviewing the delivery of special education services to students with disabilities, our most vulnerable population, are already decided in favor of the school districts. This bill proposes a drastic 180 degree change of the burden of proof in special education due process cases. It would make due process hearings excessively costly and would be an insurmountable challenge for parents, creating a situation in which the families could not have a fair hearing with any reasonable chance of prevailing.

Thank you,

Sarah Simpson

Sarah Simpson

Associate General Counsel | Office of General Counsel

Deloitte LLP

1633 Broadway, New York, NY 10019

Tel: 1 212 492 4229 | Fax: +1 212 492 2878

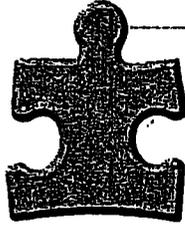
ssimpson@deloitte.com

www.deloitte.com

5425

000897

Knall, S



AUTISM SPEAKS™
It's time to listen.

March 7, 2010

Testimony in support of Section 2 of HB5425: An Act Concerning Special Education

Members of the committee:

Unfortunately, I am not able to testify in person today due to family commitments, but I hope that you will read my written testimony in strong support of Section 2 of HB 5425.

I have worked with many of you on the committee on issues specific to autism. You have heard my story, and the stories of countless others who have not received appropriate school services to their detriment. What I like best about this Section is that it does not take away CHOICE in services, it just ensures that any child who has a behavior analysis plans as part of an IEP gets the BEST possible interventions from a QUALIFIED professional.

Connecticut's Birth to Three program of early intervention for at-risk children, requires proof of certification for behavior analysts.

The insurance bill I worked with many of you to pass last year, recognizes a Board Certified Behavior Analyst (BCBA) as someone qualified to provide behavior analysis.

Our children deserve to receive the services of appropriate professionals throughout ALL aspects of their lives, just as ANY child does.

The reality of NOT passing Section 2 will have adverse effects on our children, and our school districts. Hiring people who are not qualified to deliver these services puts school districts at risk of lawsuit for potential violations of Free And Appropriate Education (FAPE). It is critical that school districts have CLEAR direction from the State of Connecticut. No one wins in that situation. Least of all, our children.

It is with great confidence that I support Section 2 of HB5425 and hope that you will do the same.

Shannon Knall
Connecticut Advocacy Chair
Autism Speaks
connecticutcac@autismspeaks.org

8425

S. Nygard

Mrs. Shannon Nygard
P.O. Box 37
Ivoryton, CT 06442-0037

March 5, 2010

Dear Representative Fleischmann:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism.

But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Shannon Nygard

There is no testimony for pages 899-900. The next page is 901.

5425

S 5425
Vincent

Thank you for taking time to read this note,

I am in GREAT SUPPORT of requiring *boards of education* to provide BOARD CERTIFIED behavior analyst's to kids with autism. I would encourage, you to look towards other students as well with BEHAVIOR needs.

It has been our experience that:

(1) Without proper HANDS ON FREQUENT and CONTINUAL training and OBSERVATION for kids with BEHAVIOR PLANS in their IEP's....we are leaving kids and their team members w/o the tools needed to effectively TEACH kids...including the PARAS that work 1-1 with our kids.

** We have suffered from people that have had lack of training...but were "presented" as experienced, etc.....

I have seen our son, physically pulled across a playground..because he did not want to get off his swing..hmm...and his hair being pulled by a student that just could not cope with the sound of others voices...I have witnessed in the same classroom a radio that was thrown at a PARA... and well meaning Paras...put our son a physical hold..because he was asking for help with the zipper on his coat...that later was found to BE STUCK on the inner lining of said coat..

I could give you more facts, but that is not the purpose of this correspondence...it is to encourage...PROPER licensing in the areas of BEHAVIOR ANALYSIS..and POSITIVE BEHAVIOR SUPPORTS...to encourage those who have a BEHAVIOR PLAN..to FREQUENTLY UPDATE IT.

Presently we have another outdated plan...and the teacher appears to be telling our son he is, regressing, bad, being a baby..ect...when he is upset/nervous/sad/having a behavior. How effective is THAT for a kid with autism, OCD, and anxiety...hmmm...doesn't it make you wonder?!

An UP TO DATE BEHAVIOR PLAN would be FAR more effective in TEACHING our AUTISTIC son WHAT to do...during these times, and training the support staff, the bus driver, and parents what the plan is by the Board Certified Behaviorist...would help our son GENERALIZE across ENVIRONMENTS...The team agreed to a new plan in August...it has yet to be completed...hmmm. Holding them accountable would be expected, wouldn't it?

(2) Due to the above I implore you do NOT put the burden of proof ONLY on PARENTS! Not only are we tired and trying our best to educate ourselves, we find ourselves educating our families communities, Dr's, and yes, even our PPT team members.. this can take a toll on our relationships, and pocketbooks.

We are left with inferior/ no lawyers/ representation..at \$160 an hr.. schools can know how to run up the "old legal bill" so parents have to back down. Every time we speak with our legal party/advocate we pay more money to them...it is \$10,000 for Due Process just to begin...most of us do NOT have that money. (Especially in this economy)

Schools on the other hand, use their lawyer's at least weekly on a paid agreement already determined yearly... in their budgets.

Finding effective, quality lawyers/advocates...can also prove challenging..if not impossible.(We paid \$2,000 for a lawyer...that lawyer did not know our son's name, nor what we were asking in mediation. I had a paid advocate,he took our records,)

Honestly, anything you can do to help parents like us would be greatly appreciated.

Sadly, we are not alone..we are not just looking to "sue" we are looking to have problems in this system...fixed. That is all we ask for...and in that we are not alone either..

Thank you for your time,

Sherri Vincent

S. Barker, S

5425

Mr. Simon Barker
108 Keeler Ave
Norwalk, CT 06854-1619

March 6, 2010

Dear Representative Fleischmann:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism.

But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Simon Barker

5425

I am writing in response to sections 2 and 3 of Raised Bill No. 5425.

Section 2, which requires school districts hire qualified people to provide behavior analysis for our children, is an important addition that I fully support.

More importantly, however, and the true reason for this email, is the detrimental position of Section 3. Currently, Connecticut law requires that school districts prove that they offered a child with disabilities an appropriate program if the dispute proceeds to a Due Process Hearing. Section 3 of this Bill proposes changing this law, and placing the burden of proof with the party who asked for the hearing, which in almost all cases is the Parent. This would be a terrible mistake and would surely allow for even less accountability by our CT schools than exists already. CT schools are already struggling to deliver FAPE to our Special Education students and parents are left with little recourse. To remove the burden of proof from the district would surely result in even less accountability by our educators and district administrators in an already struggling system. It is disappointing to see how hard parents have to fight in CT to get appropriate services for their children. The language of Section 3 is further evidence of how far this state has to come in the area of special education and how great the lack of support is for our families. Frankly, I am appalled that such a suggestion was even made.

Stephanie Smith
Mother of 7 year old with Autism

S
Haynie

Dear Ms. Calabrese:

Please do not pass Bill #HB5425, a bill that will shift the burden of proof for due process hearings to the family and away from the school district.

Although I did not have the misfortune of having to face a due process hearing, I have 2 children with dyslexia who were poorly served by my school district. I paid out of pocket so that they could learn to read. Schools have the resources, the data, the experience. To shift that burden onto parents, who are at a disadvantage and outnumbered, is unjust.

Sue Haynie,
Norwalk, CT

S
BarrettStop Raised Bill No. 5425

March 4, 2010

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the
Education Committee,

I am writing to object to the language in Proposed Bill #HB 5425. The language states that the purpose of the bill is "to establish that the burden of proof lies with the party requesting a special education hearing." The current law states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP); this makes good sense because the school districts are in control of the records, staff, and the program. The proposed change would negatively impact families with children with disabilities in Connecticut, making it excessively costly and almost impossible for parents of students receiving special education services to have a fair hearing. We urge you to oppose this bill.

Thank you,
Suzanna Barrett
220 Main street
Durham, CT 06422
stamminen@wesleyan.edu

5425

Sones, T.

Good morning,

I am livid yet sad at the bill that is currently being discussed, No. 5425. In making a determination as to the issues in dispute, the hearing officer or board shall review the evidence presented in the hearing with the burden of proof on the party requesting the hearing.

Schools need to be held accountable for providing a Free, Appropriate, Public Education (FAPE) through the Individual Education Plan (IEP). When parents have concerns regarding the education that is received for their children, I strongly feel it is the school's responsibility to provide proof of IEP implementation. Why? Without this accountability, this simply can leave the schools and teachers to be more careless, more errors in the handling of IEPs and follow-throughs.

This is outrageous.

I do NOT support Bill No. 5425.

Sincerely,

Tania Sones

Tania Sones Photography <tksones@aol.com>

T. Connellan

**BETHANY PUBLIC
SCHOOL DISTRICT**

Office of the Superintendent

Memorandum

To: Education Committee, Connecticut General Assembly

From: Timothy F. Connellan, Superintendent Bethany Public School District ⁷⁷⁵

Date: March 8, 2010

Subject: Raised Bill 5425 An Act Concerning Special Education, Section 3

I am writing at this time in support of the proposed language in Raised Bill 5425 that would revise the language in subdivision (1) of subsection (d) of section 10-76h of the Connecticut General Statutes. The revised language as proposed would clearly identify that the burden of proof in a special education due process hearing lies with the party requesting the hearing. As you may know, in November of 2005 the Supreme Court ruled on the question of burden of proof in special education due process hearings in *Schaffer v. Weast*. The majority opinion written by Justice O'Connor noted that, "The burden of persuasion in an administrative hearing challenging an IEP is properly placed upon the party seeking relief, whether that is the disabled child or the school district." Connecticut through its own regulations currently exceeds that standard and always places the burden of proof in special education due process hearings on school districts regardless of the party initiating the action. This is not the case in many other states. A prime example is Massachusetts a state that has a long standing practice of presuming the burden of proof lies with the party initiating the action as it does in other areas of the law. I have attached the Supreme Court decision in *Schaffer v. Weast* and a December 1, 2005 memorandum from David P. Driscoll, Commissioner of Education, Massachusetts Department of Elementary and Secondary Education for your review.

A revision of the language in C.G.S. 10-76h as proposed in Raised Bill 5425 would provide some fiscal relief from what is essentially an unfunded mandate. In a case recently raised in Bethany it was estimated that the cost to the District for its own attorney fees to defend itself in a full special education due process hearing was approximately \$25,000, let alone the risk of additional attorney fees estimated at \$50,000 if the hearing officer ruled in favor of the plaintiff. At risk further was the cost of a very expensive placement estimated to be in excess of \$350,000. The District chose to settle the case rather than go forward with a due process hearing. One of the principle reasons the district chose to settle even though it was providing a very appropriate program was that the burden of proof as placed on the district created an almost indefensible scenario in which the district was "assumed" to be at fault until it could prove its program was appropriate. This is a very costly practice and the costs are passed on to taxpayers in the community. If the costs are extremely high, a second level of cost is then passed on to the State via the Excess Cost Reimbursement Grant. Placing the burden of proof on the party initiating the action is likely to result in fewer instances where special education due process proceedings are initiated thereby lowering at least somewhat the costs of special education in the majority of school districts in Connecticut.

Massachusetts Department of
Elementary & Secondary Education

District/School Administration Administration >
Education Laws and Regulations

Advisory on *Schaffer v. Weast*, U.S. Supreme Court Decision on Burden of Proof in Special Education Appeals Cases

To: Superintendents of Schools, Special Education Administrators, Charter School Leaders and Other Interested Parties
From: David P. Driscoll, Commissioner of Education
Date: December 1, 2005

On November 14, 2005, the U.S. Supreme Court ruled in *Schaffer v. Weast*, 546 U.S. (2005) that in an administrative hearing under the Individuals with Disabilities Education Act (IDEA), the party initiating the appeal and seeking relief bears the burden of proof. While the Court's ruling does not change legal practice in Massachusetts, I am bringing it to your attention because it clarifies an issue relating to IDEA hearings, which either a parent or a school district may initiate at the Bureau of Special Education Appeals.

The legal term "burden of proof" or "burden of persuasion" is relevant in cases in which the evidence presented by each side is perfectly balanced. Those cases are rare. If, as in the *Schaffer* case, the hearing officer finds the evidence presented by each party to be in perfect balance, not favoring one side or the other, then the party that has the burden of persuasion will lose. While completely balanced evidence is uncommon in special education disputes, the Court's ruling is important because several lower courts had reached different conclusions on which party bears the burden of proof in IDEA hearings. The Supreme Court's decision now affirms a uniform rule that will be followed consistently in all jurisdictions.

The Court noted that its interpretation accords with the usual rule that plaintiffs bear the burden regarding the essential aspects of their claims. In response to the concern that school districts might have an advantage in information and expertise about the student's educational program, the Court stated that the procedural protections for parents under the IDEA "ensure that the school bears no unique informational advantage." Those procedural safeguards include the right to review the student's records; the right to an independent educational evaluation, and the requirement that school districts provide parents with written notice, with the reasoning behind decisions and disputed actions; and disclose results of evaluations and recommendations prior to a hearing.

The *Schaffer* decision will have little if any impact in Massachusetts, since attorneys and advocates for parents and school districts generally have assumed that the party initiating a special education appeal bears the burden of proof, and they have prepared and presented their cases accordingly. The U.S. Supreme Court has now affirmed that this is the rule under the IDEA.

The full text of the *Schaffer v. Weast* decision is available through a link on the Supreme Court's website at <http://www.supremecourtus.gov/opinions/05slipopinion.html>.

Massachusetts Department of
Elementary & Secondary Education

5425

Dr. S

Eversole, S

My name is Dr. Stephen Eversole and I'm writing in support of Section 2 of HB 5425. I've been a behavior analyst for nearly 30 years and a Board Certified Behavior Analyst since the Board began about 11 years ago. For the last 11 years, my company has been preparing behavior analysts to pass the certification exam and providing CE courses for behavior analysts.

Behavior analysis is based on rigorous scientific study dating back to animal research conducted in the early 1900s. Since the 1960s, there has been a movement to apply this science to social problems. In the past 30 years, experimentally-validated technologies have been developed and applied to a variety of social problems, including but not limited to, children with emotional problems, children with developmental disabilities, and children with autism. The recent surge in autism has resulted in over 70% of the Board Certified Behavior Analysts (BCBAs) working with children with autism. For several reasons, it is critical that these qualified professionals provide the services for our children with autism. I want to explain some of these reasons.

Scientific Support

First, there is a plethora of treatments for autism. Unfortunately, many of these aren't much better than snake oil and some can even be harmful. Clearly we want treatment interventions for our children to be based on scientific research. We don't accept anything less in medicine or the design of our automobiles and airplanes. We shouldn't accept anything less for our children burdened with autism. *Several independent reports have found that applied behavior analysis (ABA) has the most effective treatment interventions when compared to other disciplines.* I can get you a copy of these reports if you would like.

Erroneous Implementation of Methods

Second, when lay persons attempt to use applied behavior analysis, particularly with children with special needs, they almost invariably make errors. Even mental health professionals who are highly experienced and qualified in many ways, make fundamental errors. This is because behavior analysis procedures are often counter-intuitive. For example, it is not uncommon in some schools for an out-of-control child to be sent to the Principal's Office. This works in the short run because the child's problem behaviors immediately stop. The Principal talks with the child and may even allow the child to hang out for awhile. A qualified behavior analyst would not only know that this is likely to be making the problem behavior worse, but she would also be able to effectively explain to school personnel how this is detrimental. She would also be able to recognize those rare instances in which this may be the correct strategy. But for the most part, she would develop strategies that reinforce appropriate behavior in the classroom. I could go on, but the point is that *you could almost guarantee that just about any implementation of a behavioral procedure will have at least some problems if developed and implemented by unqualified professionals.*

Least Restrictive

Third, we have a moral and legal obligation to provide the least restrictive treatment possible. Consider a child in a school program in which he is not learning. This is clearly a recipe for problem behaviors. As a result, the teacher ends up relying on coercive strategies to keep him in his seat and attending. *Behavior analysts can almost always reduce or eliminate reliance on coercive strategies.*

Incalculable Costs of Inadequate Intervention or No Intervention

Clearly the greatest cost of autism is the suffering it causes the person with autism and their family. While some cases of autism are mild, most are not. I've worked with many individuals with severe aggression, self-injurious behavior, and other behavioral challenges; and some of these problems last a lifetime, especially if inadequate interventions are not provided at an early age. Although we are experiencing an unprecedented increase in autism, at no time in history have we had the know-how to address this challenge like we have now. The research shows that we can help most children with autism if treated early. In so doing, *we can eliminate or at least minimize a lifetime of difficulties that cause so much suffering and distress for families.*

Long-Term Financial Costs of Inadequate Intervention or No Intervention

As a behavior analyst, I hate to speak about things without having data to support my claims. However, I would like you to consider the cost of providing life-long support for one individual in a group home or institution. Projecting forward, I would imagine this cost well exceeds \$1 million. It is my understanding that the cost of implementing this bill is next to nothing. *I cannot fathom the possibility that the provision of ABA services by qualified behavior analysts would not prevent several individuals from receiving life-long support or institutionalization; thus saving the tax payers of Connecticut many millions of dollars; not to mention the savings to families of those with autism.*

Thank you for your time.

Steve Eversole, Ed.D., BCBA-D

Dr. T.
Zwick

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee,

I am writing as a parent of a 4-year old with autism and a Behavior Analyst who works for a regional educational service center serving southern Connecticut to strongly object to the provision in Proposed Bill HB 5425 that establishes that the burden of proof lies with the parents when requesting a special education hearing on whether the school's efforts are the most appropriate for educating a child.

The current law states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP).

The current law reflects well-settled Connecticut policy.

The current law is the only means parents have to address inappropriate educational programming and settings for our children when the school refuses to consider evidence-based practices and make based decisions based on what has the best evidence behind it for someone like my son. I have seen schools most often provide only what they readily know how to provide even when those services do not have the scientific evidence behind them as the most appropriate and effective. Rather, schools often provide what they are capable of providing given the specialties that they have on-hand already without making any changes to staffing or normal routine.

All the advantages lie currently with the school in cases of due process. First, school districts are in control of all of the child's records, the child's staff, and multiple experts. I know because I am one of those experts as a Behavior Analyst working with children with autism and older students who have behavioral problems. I am routinely called to schools to consult and I see that they do what they can, but often it is not at all effective and children continue to slip further along from year to year as problems continue and worsen. Schools have unlimited access to all the information about the program they are providing. They can use their own staff as expert witnesses and call upon people like me as well to help them.

Compare the schools to the my son's mother, as a well-educated parent of a 4 year-old with autism. My son's mother he has a Masters in Public Health from Yale and is a researcher at Yale and yet even she does not understand the jargon used at the IEP meetings and does not know to ask the right questions about our son's education and what is most effective versus what the school is indicating is needed. If it were not for my professional expertise and persistent pushing, access to friends around the country who are even more expert than me, and the current focus to put the burden of proof on the school, our son would still not be speaking (he is now a chatterbox and has almost caught up to all his typical peers), be focusing on hanging up a backpack in school (his original program when he entered preschool) even though he entered school not eating any solid food - he only drank two types of liquids and had never had solid food. The school implemented an entirely ineffective program that did not even involve the basic skills needed for eating, but rather sensory stimulation around his mouth which had failed several times when tried earlier in Birth to Three. Yet, that was what the school personnel knew how to do so they kept doing it. I insisted on using a behavioral (ABA) approach and my son started eating solid food for the first time within just one or two sessions once the behavioral program was initiated. If I had to go through Due Process, I would have to spend at least \$3000 to get my own expert to testify and finding an expert is problematic particularly when I had exhausted all the experts in the area who the school thought would be helpful. Most parents do not know who would best be able to help them with their child's educational issues and what would be a better, more appropriate educational program and setting. I was fortunate to happen to have the right expertise to help my

son, but everyone I spoke with inside and outside of the educational world have commented that they have never before had a parent with my type of expertise who happened to also have a child with autism come to them and describe so precisely what was needed based on scientific evidence and decades of practice.

Overall, There exists a huge imbalance of power favoring school districts and this bill would tip the balance so far in their favor that thousands of children and their parents in Connecticut would have no voice and no way to prove that the program the school is providing was inappropriate. This bill is not in the best interests of the children in Connecticut and removes a key means by which parents can impact their kids' education for the better when they see something wrong that impacts their children.

To add insult to injury, historically the majority of hearings reviewing the delivery of special education services to students with disabilities, kids like my son, are already decided in favor of the school districts.

This bill proposes a drastic 180 degree change of the burden of proof in special education due process cases. It would make due process hearings excessively costly and force someone like me and my son's mother to go heavily into debt, move to another state, or simply give up because the challenge would be insurmountable. I want to ensure that I have a fair hearing with any reasonable chance of prevailing to ensure my son gets the treatment he needs to continue his recovery from autism.

I'd be happy to talk with anyone in person about my passion and professional experience related to this problem and

Thank you,

Thomas J Zwicker, Ph.D.
139 Peddlers Drive
Branford, CT 06405
Cell: 914-318-4279
zwickto@excite.com

5425

5425
Steinbrick, E

Dear Sen. Gaffey; Rep. Fleischmann, and Members of the Education Committee

Shifting the burden of proof for due process will destroy the very ideals that were designed to protect our children. My son has a "low incidence disability". Our district has NEVER had the opportunity to educate a child with the educational classification of Deaf/blind prior to my son entering public school in 2000. So as you might imagine our district does not a tried and true program to fit his needs. While he is in the public school system the educators have done very little to educate themselves on my son's syndrome. Too often our Special Education director informed me that "They do not have to provide a Cadillac program". True however we as parents are not expecting perfection but it must be a program that works to meet our children's specific needs. CHARGE syndrome is a very rare syndrome 1 in 10,000 births. It is marked with several birth defects and to date my son has had 19 surgeries and he is only 12. Many of our children with such a traumatic beginning are very far behind their peers. He is visually impaired and hearing impaired and those are the senses used to LEARN. He is already behind the eight ball. Here in CT we are lucky enough to be in close proximity to Perkins School for the Blind. They are experts in the field of Deaf/blind education and a wonderful resource. Perkin's staff offered to come down to train the school staff to help my son an offer that our Special Education Director flatly refused. Alex needs specific interventions designed to forward his educational career. Often assistive technology is used to bridge that gaps he experiences. He uses a FM unit to hear his lessons. The staff used it sporadically and I found my son failing and being excluded from learning. It is clearly stated in his IEP that it MUST be used and fact the district ignored. Learning of this along with other issues related to Alex's education I had to file a complaint. Long story short the district was found to have denied my son Free Appropriate Public Education.

The district was required to defend their actions or lack thereof and was found to have not done an adequate job. Shifting the burden to me might have led to a very different outcome. I am not in the school every day and I do not have the access to staff. Will changing the responsibility now allow parent "all access"? If I will now be required to defend my son's program I will require all access to teachers, classrooms and other professionals on a daily basis. I alone will create the program. I must be allowed to require extensive training of those said persons and be allowed to remove those who do not follow the program as I will design it. I then will be the leader of the IEP team with sole discretion and responsible for those involved and all the decisions made. Shifting the burden of proof to me suggests I will have control of the education plan...it would be silly to assume anything less. You certainly cannot expect me to bear the burden of proof on something I had no hand in writing. Currently as it stand I can voice my concerns and the school staff has the choice of honoring them. The IEP is written by and serviced by the district with minimal input from parents.

We as parents hope that when our children are being educated. The whole special educational system needs to be looked at since we have several staff members in our district working with our children that cannot or chose not to understand our children's disability yet they are allowed to educate them?? Due process is a remedy for parents, as with any job the educators should be required to defend their actions or lack thereof and bear the burden of proof. Due process is not an action that we as parents enter into lightly. It is a last resort. If the districts are offering our child all that is required under IDEA why wouldn't they want to passionately defend what they are doing? Removing the burden of proof from the district and placing it on the parents sets IDEA back 25 years.

I welcome anyone who is interested in contacting me. I would embrace the opportunity to share my experiences. I can be contacted at 203-881-1029

Thank you
Ellen Steinbrick

5425

Cantwell, E

Hello our names are Ernie and Laurie Cantwell. We are the proud parents of a four-year old child with special needs. We are very much opposed to the Raised House Bill Number 5425. It does not make any fiscal or ethical sense to change the burden of proof requirements in regards to special education from the school to the parents.

In order for a child to have a chance to receive a "free and appropriate public education" it is essential for the child to have the proper services provided for them. If the burden of proof is passed on to the parents there can be no question that any special needs child from a low-income family will face a greater possibility of not receiving all the proper services. Only families that have the money to pay for an attorney will have anywhere near a fair chance on the tilted playing field to properly advocate for their children.

If the burden of proof is on the parent then it will be near impossible for our family to represent themselves in the hearing process. The stresses of having a child with special needs are great both personally and financially on a family. This law will exponentially increase both the personal and financial stress on families that have children with special needs.

We implore you to vote down Raised House Bill Number 5425. Parents of children with special needs already carry an ample burden. This bill has the potential to make that burden overwhelming for the parents, which will in the end have a negative impact on the personal and financial well-being of these families.

Respectfully Submitted,

Ernie and Laurie Cantwell

22 Oxford Lane

Cromwell, CT 06416

5425

Eva GREENWALD

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee,

I am the President of WE BELONG! Inclusion in Fairfield County. We are a grassroots, non-profit organization of parents, teachers, administrators and service providers from all over Fairfield County who are dedicated to the full inclusion of children with disabilities.

I am writing to object to the provision in Proposed Bill #HB 5425 that establishes that the burden of proof lies with the party requesting a special education hearing. The current law states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP). The current law reflects well-settled Connecticut policy. The current law makes good sense because the school districts are in control of the records, staff, the experts, and have unlimited access to all the information about the program they are providing. They can use their own staff as expert witnesses. Compare the schools to the parents, who often can't even understand the jargon used at the IEP meetings. This is a huge imbalance of power; the districts are in a far better position to defend the programs they deliver, as opposed to the parent to prove that the program is inappropriate. How would the proposed change affect parents who have children with disabilities in Connecticut? It stacks the deck more heavily in favor of school districts.

Historically, the majority of hearings reviewing the delivery of special education services to students with disabilities, our most vulnerable population, are already decided in favor of the school districts. This bill proposes a drastic 180 degree change of the burden of proof in special education due process cases. It would make due process hearings excessively costly and would be an insurmountable challenge for parents, creating a situation in which the families could not have a fair hearing with any reasonable chance of prevailing.

Please feel free to contact me at : 203- 454-9602

Best,

Eva Greenwald
President
WE BELONG! Inclusion in Fairfield County
154 North Compo Road
Westport, CT 06880
evagreenwald@sbcglobal.net

5425

Pagano, Fran

To Whom It May Concern:

I am writing in regards to Bill 5425 concerning special education. My name is Fran Pagano and I have a son who falls under special education. He is now a senior and the services he has received made it possible for him to succeed.

I am a very involved in my son's education and appreciated the services which were made possible to him through the public education system. If the burden of proof falls on the parents, it will be detrimental to hundreds of students and teachers.

Having a child with a learning disability is often very difficult for a parent to accept, and telling them they will be responsible for proving their child's disability is ludicrous. What will the requirements be for proving it? Is it just a visit to the primary doctor or is proof required by other professionals? Many households do not have medical coverage, so these tests will be an out of pocket cost for families who barely live week to week.

How can we say in one breath that the education of our children is a priority, and then turn around and potentially harm many young students? We hear many political figures speak on the importance of the education of our youth and now want to put them in a position where "success" is just a spelling word and not something they feel is possible. I think it is a duty to see that our children have the best education available to them without placing the burden of proof on families who may not have the means to get it.

Please consider revising this bill.

Thank you,

Fran Pagano
Training Coordinator
Arc of Meriden-Wallingford, Inc.
200 Research Parkway
Meriden, Ct. 06450
203.237.9975
fpagano@mwsinc.org

Molwitz, G.

5425

George & Lisa Molwitz
69 Maryanne Dr.
Monroe, CT 06468
georgemolwitz@yahoo.com

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee,

Please accept this letter as my objection to the provision in Proposed Bill #HB 5425 which seeks to shift the burden of proof to the party requesting a special education hearing. As a parent who is currently involved in a due process, I must tell you how absolutely difficult it is for parents to obtain the necessary evidence to go forward in a complaint against the schools.

As parents, one of our few remaining levelers in the playing field is that the school must prove the appropriateness of its evaluation or program, not that non-expert parents have to prove the contrary. The current law is necessary because school districts are in control of the records, staff, the experts, and have unlimited access to all the information about the program they are providing. I can tell you from personal experience that it is very, very difficult to get a complete set of records from the school, despite the many laws saying schools have to provide parents with access to records. From my experience, I know that a parent may not know all the records to ask for and the school "forgets" to mention or provide what they have. Schools can use their own teachers as expert witnesses; hire \$400/hour attorneys; have the support of paralegals and law libraries. A parent representing the interests of a child *pro se* does not have these resources available and may not be able to front retainer fee of several thousand dollars to a parent attorney or have confidence in the supposedly "free or low-cost legal services" available. It is impossible to overstate the huge imbalance of power when a parent tries to get a fair hearing.

Please leave the burden of proof with school districts who are supposed to provide the free and appropriate education. There is a fundamentally unfair reason that schools want to shift the burden of proof to the complaining party — they rarely complain about themselves! Schools are the government and have the full force of the rest of the government behind them.

Please keep in this smallest slice of equity for the parent attempting to receive a fair hearing from an impartial officer. Please oppose a change to the burden of proof in Raised Bill No. 5425 - or HB5425.

Thank you,

Lisa A. Molwitz

g. Fleming

March 5, 2010

RE: Raised H.B. 5425, Session Year 2010

Dear Senator Gaffney, Representative Fleischmann, and the Education Committee members:

I am an advocate in Connecticut assisting parents of children with special needs in securing their special education and disability rights. I am also the parent of a 12 year old boy with autism. I am writing in strong opposition to Raised H.B. 5425. Please accept this letter as my testimony. The provision of this bill which shifts the burden of proof from the school district to the party bringing suit will seriously weaken the rights of parents who seek redress through their procedural safeguards and curtails the ability of students with disabilities to access an appropriate education. This provision will invite both procedural and substantive harm to students with disabilities.

The state of Connecticut has long recognized that the burden of proof in school disputes rests with the schools themselves as the schools have an affirmative obligation to provide FAPE--a free and appropriate public education. The school controls the record--they write it and maintain it. They control the information that parents receive with regard to their children's progress. The district has at its disposal the financial wherewithal to hire expert witnesses to make its case. The parent has none of this. The parent bringing suit already has to present first, in due process. The school does not have to defend the appropriateness of its program--they merely have to respond to the parent's case. Shifting burden of proof to the party bringing suit would add yet another challenge to the already Sisyphean struggle to access one's rights under IDEA. To begin with, due process is not a level playing field--schools use tax dollars to hire counsel. Many parents do not have the means to hire an attorney much less have a contract with a firm. Schools have their own in-house expert witnesses, parents must hire their own experts with no expectation of reimbursement. Schools also have the benefit of having gone through due process many, many times. Parents do not and often find themselves at a loss when it comes to figuring out the procedure. The "balance" of power clearly favors the school district already. A change in the law would further erode a parent's ability to secure the education rights for his or her special needs child. This bill, if passed, would have serious financial implications for the state. While school districts might find it a financial windfall, the state will eventually end up paying for the losses--in jails, in services, in unemployment and underemployment; when an appropriate education can make all the difference--especially in the bottom line! Pay now or pay later, and it is always more expensive later...But I caution you, if we choose to pay later--the school system is no longer responsible, the state is...

Please do not shift the burden of proof to the party bringing suit in educational due process cases. The basic principle of fairness will be lost and the cost of that is simply too high! Thank you for your time and consideration in this matter

Regards,
Gerri Fleming
The Advocacy Office of Gerri Fleming, LLC
10 Wall Street, Lower Level
Norwalk, CT 06850
Phone 203.853.7747
Fax 203.853.9246
Mobile 203.543.6500
Email: gerri.fleming@gmail.com
Website: www.ctadvocacy.com

5425

H Benton, H

Center for Children's AdvocacyUniversity of Connecticut School of Law
65 Elizabeth Street, Hartford, CT 06105**TESTIMONY OF THE CENTER FOR CHILDREN'S ADVOCACY
IN OPPOSITION TO SECTION 3 OF RAISED BILL NO. 5425,
AN ACT CONCERNING SPECIAL EDUCATION**

March 8, 2010

This testimony is submitted on behalf of the Center for Children's Advocacy, a non-profit organization based at the University of Connecticut School of Law. The Center provides holistic legal services for poor children in Connecticut's communities through individual representation and systemic advocacy. Through our Truancy Court Prevention Project and TeamChild Juvenile Justice Project, the Center represents children in securing appropriate educational programming and improving academic outcomes by reducing high suspension, expulsion, and dropout rates.

We strongly oppose section 3 of Raised Bill No. 5425, An Act Concerning Special Education, which places the burden of proof in special education due process hearings on the party seeking the hearing, most often parents who allege that the school has failed to meet their child's unique educational needs.

Under Connecticut's existing special education regulations, if the parent or guardian of a child eligible for special education services requests a due process hearing to challenge the effectiveness of her child's IEP, the local educational agency bears the burden of proving that the academic program affords the child a free appropriate public education (FAPE).¹ This approach is consistent with the laws of other jurisdictions,² and has been supported by Attorney General Richard Blumenthal,³ the former Commissioner of the Department of Education,⁴ and numerous special education advocates.⁵ Requiring the district to demonstrate that its plan is reasonably tailored to meet the child's individual needs may actually help avoid the administrative and litigation costs of challenges to inadequate educational programming by strengthening the school's resolve to carefully develop an appropriate IEP.⁶

a. **Shifting the Burden of Proof to Parents is Inconsistent with the Goals of State and Federal IDEA Regulations**

¹ CONN. AGENCY REGS. § 10-76h-14 provides that in special education due process hearings, "the public agency has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency" (emphasis added).

² See, e.g., DEL. CODE ANN. tit. 14, § 3140 (West 2009); D.C. MUN. REGS. tit. 5, § 3030.3 (West 2009); N.J. STAT. ANN. § 18A:46-1.1 (West 2009).

³ Elissa Gootman, *Special Education Ruling's Effects Unclear*, N.Y. TIMES, Nov. 17, 2005, at A28.

⁴ Circular Letter, Series 2005-06, C-9 (Feb. 22, 2006) (noting that Connecticut's burden of proof regulation represents "a valid state policy that school districts are in a better position to defend the appropriateness of an IEP").

⁵ *Joint Committee on Education Public Hearing* (March 23, 2009) (statement of Catherine Holahan, Attorney); *Joint Committee on Education Public Hearing* (March 23, 2009) (statement of Maria Morelli-Wolfe & Lynn Cochrane, Attorneys); *Joint Committee on Education Public Hearing* (March 23, 2009) (statement of James D. McGaughey, Executive Director, Office of Protection and Advocacy for Persons with Disabilities).

⁶ *Schaffer v. Weast*, 546 U.S. 49, 65 (2005) (Ginsburg, J., dissenting).



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The Individuals with Disabilities Education Act (IDEA) was implemented to remedy the absence of appropriate educational programming and the lack of adequate school-based resources for millions of children with disabilities.⁷ Consequently, IDEA and Connecticut regulations impose an affirmative duty on school districts to protect and promote the educational welfare of disabled children by identifying students in need of interventions and formulating their IEPs.⁸ The decision to impose on the district an obligation to find and program for students eligible for special education services, and to afford these students and their parents extensive procedural safeguards, reflects a clear commitment to protecting the educational rights of children with disabilities. Shifting the burden of proof to parents who challenge the adequacy of their child's educational program unfairly forces them to assume the role of IDEA-enforcer; a role that is contrary to IDEA's strong policy statement in favor of holding districts legally responsible for implementing and monitoring the provision of special education services to all eligible students, and one that parents are ill-equipped to handle. The U.S. Supreme Court's decision regarding burden of proof in special education due process hearings, *Schaffer v. Weast*, does not apply to Connecticut.⁹ In *Schaffer*, the Court only addressed the issue of where to locate the burden of proof when state law was silent on the issue.¹⁰ Since Connecticut state law allocates the burden of proof to the public agency, *Schaffer* does not impact Connecticut.

b. Allocating the Burden of Proof to School Districts Holds them Accountable for Complying with IDEA

When a dispute arises regarding the adequacy of the child's IEP, the school district is in the best position to demonstrate that it has complied with federal law. An overwhelming majority of parents whose children are eligible for special education services lack the sophistication and specialized training necessary to challenge the design and implementation of their child's IEP and very few can afford legal representation to guide them through such a challenge.¹¹ Given the complex nature of special education law, and the availability of numerous interventions and alternative programs for children struggling to access the curriculum, parents face significant barriers to proving that the district has denied their child a free, appropriate education. By contrast, local school districts can draw on a wealth of expertise and training, as well as their experiences with other disabled children, to demonstrate the appropriateness of a child's academic plan and their compliance with IDEA.¹² Maintaining the burden of proof on the school districts ensures an important dimension of accountability and serves as an additional guarantee that all students, regardless of their cognitive or behavioral deficits, have an equal chance at academic success. We urge you to protect the rights of special education students by opposing this section of the bill.

Thank you for your time and consideration.

Respectfully submitted,



Hannah Benton
Equal Justice America Fellow Attorney
Truancy Court Prevention Project and TeamChild Juvenile Justice Project

⁷ 20 U.S.C. § 1400(c)(2).

⁸ 34 C.F.R. § 300.11; CONN. AGENCY REGS. § 10-76d-6.

⁹ *Schaffer*, *supra* note 6.

¹⁰ *Id.* at 62.

¹¹ David M. Engel, *Law, Culture, and Children with Disabilities: Educational Rights and the Construction of Difference*, 1991 DUKE L.J. 166, 187-94 (1991).

¹² *Oberti v. Bd. of Educ. of Borough of Celmenton Sch. Dist.*, 995 F.2d 1204, 1219 (3d Cir. 1993).

5425

Connor, C

Mr. Colm Connor
8 Hawleyville Rd.
Bethel, CT 06801-1123

March 8, 2010

Dear Representative Fleischmann:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism.

But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Colm Connor

*R. Blumenthal*RICHARD BLUMENTHAL
ATTORNEY GENERAL55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120Office of The Attorney General
State of Connecticut**TESTIMONY OF
ATTORNEY GENERAL RICHARD BLUMENTHAL
BEFORE THE EDUCATION COMMITTEE
MARCH 8, 2010**

I appreciate the opportunity to support section 2 of House Bill 5425, An Act Concerning Special Education.

Section 2 requires local boards of education that use applied behavior analysts for special education of children with autism to ensure that such analysts are certified by the Behavior Analyst Certification Board (BACB). The provision specifically states that local boards of education are not required to use applied behavior analysis -- leaving that decision to the individuals who develop the individualized education plan for the student. Further, the local boards of education have discretion whether to provide such services through an applied behavior analyst or other licensed or certified professional who can provide such services within the profession's scope of practice.

In 2008, a group of parents contacted my office regarding an individual who was performing behavior analysis services for their children who have autism spectrum disorder. These services were contracted through the local public school system as well as individually by the parents. In the course of my investigation of this particular person, it became clear that local school systems do not rely on any state certification or license to ensure that the person they hire for behavior analysis services meets minimum educational and professional criteria.

Working with parents of children with autism spectrum disorder, I recommended legislation to require local school districts to only hire individuals to perform behavior analysis services for children with autism spectrum disorder who were certified by the Behavior Analyst Certification Board. The Education Committee sought more information on this issue by charging my office with discussing this matter with the Connecticut Departments of Education and Higher Education and reporting back to the Committee with recommendations.

My staff met with -- and received comment from -- members of the Department of Education, the Department of Higher Education, the Department of Developmental Disabilities, school superintendents, heads of school special education departments, school psychologists, parents and advocates of children with autism spectrum disorder, private providers of behavior analysis services and representatives from the Behavior Analyst Certification Board.

In my report to the committee, I urged that individuals who are employed or contracted by local boards of education to provide behavior analysis for all special education students -- not just those with autism spectrum disorder -- meet professional and educational standards. As a first step toward full licensure through the Department of Public Health, I recommended that the committee support a statutory requirement for local boards of education to hire only behavior analysts who are certified by a national board such as the Behavior Analyst Certification Board or who, in their scope of professional practice, may engage in behavior analysis, such as school psychologists.

Section 2 enacts this recommendation -- though it restricted the scope to children in special education with autism spectrum disorder. As my report concluded, it is often difficult to determine at initial stages of the special education process whether a child has autism spectrum disorder and that it was best to provide the same requirement for certification for applied behavior analysts regardless of the underlying condition of the student in a special education setting. I urge the committee to consider including all special education students under this requirement.

Subsequent to the issuance of the report, questions were raised about the appropriateness of relying on the BACB for certification. The BACB is a non-profit, 501(c)(3) organization based in Florida, see www.bacb.com. Its certification program was developed as part of the state of Florida's certification of behavior analysts and has been certified by the National Council for Certifying Agencies. As its website indicates, the organization has been endorsed by the Association of Professional Behavior Analysts and the American Psychological Association, among others.

Within the state of Connecticut, the Department of Developmental Services has relied on the BACB for its behavior analyst services since at least July 1, 2000. Recently, the General Assembly required BACB certification as a prerequisite for health insurance coverage for behavior therapists. See, Public Act 09-115.

Other states rely on the BACB certification, including Arkansas (Arkansas Code Annotated § 20-77-124), California (Cal. Education Code § 56525); Colorado (10 Colorado Code Regs. 2505-10-8.519), Florida (Florida Statutes Annotated § 393.17), Illinois (105 Illinois Code of Statutes, 5/14-1.09d), Indiana (Indiana Code 25-41-1-1), Kentucky (907 Kentucky Administrative Regs 3:090), Maryland (Code of Maryland Administrative Regulations 10.09.56.07), Minnesota (Minnesota Statutes Annotated § 125A.0942), and Montana (Montana Code Annotated 33-22-515).

I urge your favorable consideration of section 2 of House Bill 5425.

5425

D. Primavera

HOUSE BILL-HB5425

DATE: 3/8/2010
TO: CHRIS.CALABRESE@CGA.CT.GOV
FROM: DANIEL PRIMAVERA
RE: RAISED BILL NO. 5425

Good afternoon Senator Gaffey, Representative Fleischmann and esteemed members of the Education Committee. My name is Daniel Primavera, and I would like to voice my strong opposition to Section 3 of Raised House Bill #5425, which shifts the burden of proof at special education due process hearings to the party requesting the hearing.

As a parent of 2 children with Special Needs, I am deeply concerned about the potential injustices that Section 3 could create against families trying to gain access to the services they deserve. I hope that I am never in a situation where I would need to initiate due process with my school district, but if the need should arise I want to be assured that the process is a fair one. School districts are inherently at an unfair advantage in that they have ultimate control over the entire process, from the staff members to all the testing and other information upon which decisions are made. Districts also have virtually unlimited access to experts and high-powered legal representation – all at taxpayer expense.

Placing the burden of proof on the party requesting the special education hearing would only exacerbate this imbalance of power, as in most instances it is the parents who are making the request; districts typically have no reason to initiate due process since they have ultimate control over service delivery and can simply withhold services. Due process hearings would become even more costly, accessible only to the most wealthy, and also unfair – ultimately depriving students of their right to an appropriate education.

Unless you are a parent of a child with significant special needs, there is no way to know the pressures we feel every single day regarding our children's educational programs. For students like my daughter, receiving an appropriate education will likely make the difference between her living a maximally independent, productive life and being dependent on state- and federally-funded services. Although it would in no way level the playing field in due process hearings, please at least give families a more equitable opportunity to exert their due process rights. Please delete Section 3 from Raised House Bill Number 5425.

Thank you very much for your consideration.

Daniel Primavera

3/8/2010

5425

Low, D

RIDGEFIELD BOARD OF EDUCATION

70 Prospect Street, Ridgefield, Connecticut 06877
Phone: (203) 431-2800 Fax (203) 431-2810

MEMO

DATE: March 5, 2010
TO: Education Committee of the Connecticut General Assembly
FROM: Deborah Low, Superintendent of Schools, Ridgefield Public Schools
SUBJECT: Comments in support of House Bill #5425 (Burden of Proof)

I would like to add these comments in support of House Bill #5425 seeking to amend Section 3D, subdivision (1) subsection (d) of statute 10-76h of the general statutes.

In virtually every civil action in the country, the burden of proof rests on the party bringing the action.

The recent Supreme Court decision Schaeffer v. Weast held that in the absence of some reason as determined by the state, in due process hearings, the burden of proof should be on the parents who commence special education due process hearings, as in other types of litigation.

Connecticut is only one of two states in the country that has determined that the burden of proof remains with the school district.

The current burden of proof standards seem to start with the presumption that district programs are inappropriate and need proving otherwise. If parents make minimal or unsubstantiated complaints against the district, the current practices require the district to prepare for the case anyway. Hearings are costly and staff members are pulled away from their regular duties to prepare and present testimony.

As it should, special education legislation provides students and parents many procedural safeguards. However, the current burden of proof practices are not balanced and have the effect of being a serious drain on the already scarce, valuable school resources of time and money.

Thank you for your attention.

5425

Dr. E
5425
Pitkoff

Dear Representative Fleischmann,

The costs for special education services have skyrocketed in recent years resulting in a higher tax burden for our towns and cities and leaving less funding available for overall educational services. Whereas school district professionals seek to provide the most appropriate services for students identified with special needs, they have increasingly been challenged on their recommended placements and programs by parties seeking more expensive, and oftentimes, less appropriate educational placements.

School Boards and parents all too often find themselves in hearings when there is a dispute between them regarding the placement or services prescribed for a student. Connecticut has been an anomaly in this nation in that it places the burden of proof in these hearings squarely on Boards of Education. *The burden of proof should rest with the party requesting the hearing.* This will likely result in fewer unnecessary challenges, lower expenditures in placements and legal fees for school districts, and the most appropriate (and cost-effective) placements for students with special needs.

Please bring Connecticut's burden of proof regulations into line with the federal legal practice of placing the burden of proof on the party who is requesting the hearing.

Sincerely,

Evan Pitkoff,
M.A. (Special Education), Ed.D. (School Administration)
Executive Director, Cooperative Educational Services

Dr. Evan Pitkoff
Executive Director
C.E.S.
40 Lindeman Drive
Trumbull, CT 06611
(203) 365-8803
(203) 365-8804 (fax)
pitkoffe@ces.k12.ct.us
Visit us on the web at: www.ces.k12.ct.us

5425

000928

Dr. McCarty, J

Chris, Please endorse bill 5425 for ABA services. As a Board Certified Behavior Analyst, I see the necessity of this bill for children with Autism and significant disabilities.

Thank you
Dr. Judy McCarty, BCBA-D

Dr. Michael Rice
602 Horizon Way
Manchester, CT 06042-1797

March 8, 2010

Dear Representative Bartlett:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilize evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism. However, these services need to be provided by someone properly trained in ABA.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA, or a state licensed health care professional whose scope of practice includes behavior analysis.

The "scope of practice" provision is very important, but a bit concerning. Many school psychologists have had possibly one course in Applied Behavior Analysis, Behavior Principles, or the like. Speech and Language pathologists and social workers that I know usually have no training in applied behavior analysis. In order to take the examination for BACB Board Certification, there are a minimum of 5 courses required along with 1500 hours of supervision in activities of a behavior analytic nature.

Thus, having clinicians provide services under their license does raise concerns, that there would be pressure due to the needs in a school, to have school clinicians who have not had adequate training, conduct assessments and develop plans for students. It would be important that school clinicians seek additional formal training Except for this provision, I ask that you support Section 2 of HB5425.

Sincerely,
D. Michael Rice, PhD, BCBA-D
School Psychologist

Dr. Michael Rice
602 Horizon Way
Manchester, CT 06042-1797

March 5, 2010

Dear Representative Fleischmann:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism. But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Michael Rice

B
Berrey

March 4, 2010

Dear Representative Fleischmann:

I ask that you please support HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism.

But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Brenda Berrey

5421

Innis, C

Mrs. Carla Innis
207 Westbrook Road
Essex, CT 06426-1514

March 5, 2010

Dear Representative Fleischmann:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism.

But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Carla Innis

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee,

I am writing to object to the provision in Proposed Bill #HB 5425 that establishes that the burden of proof lies with the party requesting a special education hearing. The current law states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP). The current law reflects well-settled Connecticut policy. The current law makes good sense because the school districts are in control of the records, staff, the experts, and have unlimited access to all the information about the program they are providing. They can use their own staff as expert witnesses. Compare the schools to the parents, who often can't even understand the jargon used at the IEP meetings. This is a huge imbalance of power; the districts are in a far better position to defend the programs they deliver, as opposed to the parent to prove that the program is inappropriate. How would the proposed change affect parents who have children with disabilities in Connecticut? It stacks the deck more heavily in favor of school districts.

Historically, the majority of hearings reviewing the delivery of special education services to students with disabilities, our most vulnerable population, are already decided in favor of the school districts. This bill proposes a drastic 180 degree change of the burden of proof in special education due process cases. It would make due process hearings excessively costly and would be an insurmountable challenge for parents, creating a situation in which the families could not have a fair hearing with any reasonable chance of prevailing.

As a single Mom who has spent years fighting for special services and getting almost nothing, then having pursued outplacement during a due process hearing, and FINALLY last year getting for my 14 year old special needs daughter what she needs, it has been costly, timely, and quite stressful.

Thank you,

Carol Pines

6 Old Farms Lane

New Milford, CT 06776

860-354-9248

carolpines@sbcglobal.net

5425

Redpath, C

Mrs. Caroline Redpath
17 Ruops Road
Tolland, CT 06084-3541

March 8, 2010

Dear Representative Fleischmann:

I ask that you please support Section 2 of HB5425 An Act Concerning Special Education. Both federal and state legislation mandate that our public schools utilized evidence based practices for our students with special education needs. Hundreds of scientific studies have shown that applied behavior analysis improves outcomes for children and adults with autism.

But these services need to be provided by someone properly trained.

The legislation would require that anyone who was hired by our schools to provide applied behavior analysis services be a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst working under the supervision of a BCBA or a state licensed health care professional whose scope of practice includes behavior analysis.

Sincerely,

Caroline Redpath

5425

Olko, C

RE: HB 5425

Dear Senator Gaffey, Representative Fleischmann and Members of the Education Committee,

I am opposed to HB 5425 sec. 3 (d) (1) shifting the burden of proof to the filing party in a due process hearing. I am the parent of a child that requires special education. My child is entitled to a free and appropriate education, FAPE, but the appropriateness can be a matter of dispute between school and parent. Parents file special education hearings as a last resort after exhausting every means to find a workable solution. We must shoulder the cost of hiring an attorney, in addition, to locating and hiring our own expert witnesses. The school districts are privileged to have their own attorneys with unlimited resources. They have access to records, school personnel and experts witnesses to defend the appropriateness of their programs. The process is not evenly balanced and difficult for parents financially and emotionally. Resources are not readily available and free to parents. The proposed regulation would create an additional financial hardship that parents could not possibly afford. Please vote NO!

Thank you,

Charlyne Olko
Enfield

5425
Anon

Re HB 5425 (section 2) Please vote FOR section 2 of this bill.
The ABA professionals must have at least minimum credential requirements, as a standard ,in order to proficiently service our children whose PPT deems ABA necessary.

Re HB5425 (section 3) Please vote against section 3 of this bill.
The parents already have an uphill battle trying to see that their child gets an "appropriate " education. It is amazing that they can even think straight. To put the Burden Proof on the parents in a Due Process Hearing is outrageous.

From: chathamgram1@aol.com

Chappa

~~5425~~
5425

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee,

I am writing to object to the provision in Proposed Bill #HB 5425 that establishes that the burden of proof lies with the party requesting a special education hearing. The current law states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP). The current law reflects well-settled Connecticut policy. The current law makes good sense because the school districts are in control of the records, staff, the experts, and have unlimited access to all the information about the program they are providing. They can use their own staff as expert witnesses. Compare the schools to the parents, who often can't even understand the jargon used at the IEP meetings. This is a huge imbalance of power; the districts are in a far better position to defend the programs they deliver, as opposed to the parent to prove that the program is inappropriate. How would the proposed change affect parents who have children with disabilities in Connecticut? It stacks the deck more heavily in favor of school districts.

Historically, the majority of hearings reviewing the delivery of special education services to students with disabilities, our most vulnerable population, are already decided in favor of the school districts. This bill proposes a drastic 180 degree change of the burden of proof in special education due process cases. It would make due process hearings excessively costly and would be an insurmountable challenge for parents, creating a situation in which the families could not have a fair hearing with any reasonable chance of prevailing.

Thank you,
Cheryl Chappa DVM
4 Westview Trail
New Fairfield, CT 06812
ChappaDVM@sbcglobal.net

5425

Dias Kohler

Good morning,

I am writing you in response to the bill known as Raised Bill No. 5425 - or HB5425. The current law states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP). The proposed change places the burden of proof onto the party requesting the hearing, which is often the family.

Being an educator as well as a parent of a special needs child who needs a placement other than what the local district can provide, I can only say as it stands now parents must fight for every minute thing their child needs when in the public system. I think for once, as educators, we should at least attempt to better understand all the family is going through on a daily basis without causing more hardship when it comes to education. The choice of the word "burden" is just one more thing parents of special needs children DON'T need. Why must a parent have this *burden* when it is the educational system that must provide what the child needs in order to learn? Many parents do not have the means or knowledge necessary to fight yet another battle for their child.

In my opinion, as both an educator and parent, it is the responsibility of the public education system/local school district to carry the burden of proof proving that they have indeed provided a "Free, Appropriate, Public Education" (FAPE).

Thank you!
Cheryl Dias-Kohler

5425

000939
McAuliffe, C

Connecticut Down Syndrome Congress
PO Box 4487
Wallingford, CT 06492
Toll Free: 888.486.8537
www.ctdownsyndrome.org

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee,

I am writing to object to Section 3 of Proposed Bill #HB 5425, establishing that the burden of proof lies with the party requesting a special education hearing.

As the President of the Connecticut Down Syndrome Congress (CDSC), I am writing on behalf of the students with Down syndrome and other intellectual disabilities to OBJECT to the Section 3 of Proposed Bill #HB 5425, which establishes that the burden of proof lies with the party requesting a special education hearing.

The Connecticut Down Syndrome Congress was formed in 1986 as a special interest group to advocate for persons with Down syndrome in the state of Connecticut. Today we are a welcoming and supportive network of over 350 parents, numerous professionals and over 20 advocacy groups statewide. Our vision is to improve the lives of persons with Down syndrome, by promoting equity, opportunity, inclusion and empowerment for individuals and their families in all aspects of life. In the CDSC's role as a parent support group has heard countless reports from parents and advocates that all too frequently school districts have only honored a commitment to a child receiving a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP) because they felt the burden of proof.

The current law states that it is the responsibility of school districts to prove they have provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP). The current law reflects well-settled Connecticut policy.

To change current law would place an unfair burden on parents whose children are denied a free and appropriate public education by local school districts. Hearings by the State Department of Education are the best -- and often the only -- means by which parents can secure the civil rights of their children when local districts refuse to provide essential educational services.

In these hearings, school districts have the considerable advantage of usually being represented by one of our state's large legal law firms who are paid by the district's insurance company while parents often represent themselves because they cannot afford to hire a private attorney. School districts also control every step of the educational process, from staffing and testing to the students' entire educational record. Placing an additional burden on parents in these circumstances is unfair and unnecessary. The court and the Constitution already indicate where the burden of proof lies; there is no need for the legislature to further complicate this issue and we strongly object to any move to make this process more difficult for families.

Sincerely,
Chris McAuliffe
President, Connecticut Down Syndrome Congress

Dear Sen. Gaffey, Rep. Fleischmann, and Members of the Education Committee,

I am writing to object to the provision in Proposed Bill #HB 5425 that establishes that the burden of proof lies with the party requesting a special education hearing. The current law states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP). The current law reflects well-settled Connecticut policy. The current law makes good sense because the school districts are in control of the records, staff, the experts, and have unlimited access to all the information about the program they are providing. They can use their own staff as expert witnesses. Compare the schools to the parents, who often can't even understand the jargon used at the IEP meetings. This is a huge imbalance of power; the districts are in a far better position to defend the programs they deliver, as opposed to the parent to prove that the program is inappropriate. How would the proposed change affect parents who have children with disabilities in Connecticut? It stacks the deck more heavily in favor of school districts.

Historically, the majority of hearings reviewing the delivery of special education services to students with disabilities, our most vulnerable population, are already decided in favor of the school districts. This bill proposes a drastic 180 degree change of the burden of proof in special education due process cases. It would make due process hearings excessively costly and would be an insurmountable challenge for parents, creating a situation in which the families could not have a fair hearing with any reasonable chance of prevailing.

I will tell you that my 11 year-old with Down syndrome is a successful student today because the burden of proof has been on the school district up to this point. My district has tried to deny my daughter a chance to participate along with her peers in CMTs, has tried to deny her comprehensive reading evaluations and improved reading instruction and has also tried to force her to take needless evaluations and tests. We have only been able to maintain her Free Appropriate Public Education because the school district knows that today the burden of proof is theirs. I will tell you that I have lost track of the number of times someone on the school district has told us they are amazed at how much my daughter has accomplished. Ideally, school people would stop being amazed by how much my daughter has benefited by them doing more than they had thought was necessary. Sadly that day is still a ways off. I do know that without the school districts owning the burden of proof my daughter's school experiences would have been much more limited and she would have much fewer opportunities in school and later in life.

Thank you,
Chris McAuliffe
18 Kellogg St
Windsor, CT 06095
mack1200@comcast.net
860-683-2535

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DeGennaro, C.

To the Committee,

Please allow me a moment of your time and thank you for sharing some of this deeply personal information this letter will impart. My name is Christina DeGennaro. 17 months ago, my husband and I welcomed a child into this world. He came into this world, just like any other baby, shouting and crying, and he was utter perfection. We knew nothing but love. Shortly after the birth of our son, Rory Celestino DeGennaro, our world came crashing down around us. Suspicions were raised of Down syndrome. Suspicions soon confirmed by a karyotype.

The hopes and dreams we had for the future, well they were replaced with fears, concerns, and questions. These are fears, concerns, and questions we had never, ever foreseen in our future. There is no greater shock than learning your child has been born with a disability. Unless you are a parent with a child who has a disability, well then no words I write can ever capture the heartache, the agony. Yet, our son, to us, still represents perfection. Oh if you could see his smile, hear him laugh. But as much as Rory is like any other baby or child--Rory is NOT like any other child. We learned early on that certain things which come easily, no, naturally to so many children--well that wouldn't be the case for Rory. We dedicated our lives to working with Rory, helping him achieve his every potential. He has therapy four days a week, specialists/doctors appointments several times a week--so no, he is not like most children.

So why am I writing? I am writing to object to the language in Proposed Bill #HB 5425. As you know, the language states that the purpose of the bill is "to establish that the burden of proof lies with the party requesting a special education hearing;" The current law states that the burden of proof is the responsibility of the school district to prove it has provided a "Free, Appropriate, Public Education" (FAPE) through the Individual Education Plan (IEP). It is obvious and clear to all that the current law as it exists makes perfect sense...after all, the school districts are in control of the records, staff, and the program. How would the proposed change affect parents who have children with disabilities in Connecticut? Or I ask you on a personal level, how will this change affect parents such as myself? It will hurt. It will create greater hurdles and obstacles than any one parent needs. Please, understand, I have been a teacher for 6 years, but in the past 17 months, I've become something even more--I've become a parent, an advocate. Every day I'm fighting for my son to talk, walk, stand, eat, and do everything that other children do so naturally. I don't want the joy I know to be so overpowered by a lifetime of a further fight which this change would represent.

You don't need me to tell you that history shows, the majority of hearings reviewing the delivery of special education services to students with disabilities, our most vulnerable, and unfortunately underrepresented population, are already decided in favor of the school districts--you know that. This drastic 180 degree change of the burden of proof would make it excessively costly and almost impossible for parents of students receiving special education services to have a fair hearing with any reasonable chance of prevailing. I implore you, please, please don't add to the struggles we know and face every day.

I conclude by saying this; Rory has been the greatest, most unique blessing in our lives. He has taught us much about ourselves, taught us what genuine strength means and is. He makes us better parents and better human beings--all this at 17 months. I need you to know though our struggle is great, this love we feel is great, it is pure, it is unending. I just wanted you to know that important information about our family. When you are making this important decision, I ask you to please think of Rory. Warm Regards, Christina and Douglas DeGennaro 203-641-1622

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Connecticut School Attorneys Council

cl. CABB
81 Wolcott Hill Road
Wethersfield CT 06109
860-571-7446 | FAX 860-571-7452

TESTIMONY

On behalf of the Connecticut Council of School Attorneys (COSA), I would like to speak in favor of Raised Bill 5425, Section 3, which would amend Connecticut General Statutes § 10-76h(d)(1) to place the burden of proof on the party requesting the hearing in a special education dispute. First, it is worth noting that this would effectively place the burden of proof on the school district in any case where the school district initiates the hearing request, in addition to placing the burden on the parents, guardians, or DCF in cases where the parent or guardian initiates a hearing. The number of cases in which school districts initiate hearings is not an overwhelming percentage, I am sure, but it does impact those cases in which the school district is required to initiate a hearing under the Individuals with Disabilities Education Act (IDEA) to defend an evaluation when it makes a decision to deny a parent's request for an independent educational evaluation (IEE) or where, as required by state law, the school district's recommendation is for an out-of-district placement for a child with a disability, but the parent or guardian does not consent to such a placement. The burden of proof would also continue to reside with the school district in cases where the district initiates a hearing to obtain a hearing officer's order changing the student's placement for a period of 45 school days in disciplinary cases where the student with a disability has violated the code of conduct and the violation is deemed a manifestation of the child's disability, but the district contends that the student poses a danger to students or staff at the school.

According to extensive research conducted by the Connecticut Association of Boards of Education (CABE), Connecticut is one of only 2 states in the nation that have not adopted the IDEA preference for placing the burden of proof on the moving party, following the United States Supreme Court decision in *Schaffer v. Weast* in 2005. Forty-eight other states either had that as the rule prior to the Supreme Court decision or adopted that rule following the Supreme Court's decision. We have not heard reports coming out of these other states that parents are at any significant disadvantage following the adoption of that rule.

Casting a vote in favor of this provision does not cast a vote against children with disabilities or parents of children with disabilities. This is about the proper allocation of the burden of proof in American jurisprudence. As noted by the United States Supreme Court, in the absence of some compelling reason, the burden of proof is placed on the party who brings the action to prove his or her case. Each of the reasons advanced by the parent advocacy community, most notably that the information is in the hands of the school district and therefore it is "only fair" that the school district hold the burden of proof, has been rejected by the United States Supreme Court. This argument was rejected because parents have the right to obtain copies of all documentation associated with their child's educational program, and they have the right to an independent educational evaluation of the child by an independent expert, at public expense. That expert, if he or she renders an opinion in favor of the position of the parent, can be called by the parent as a witness in any subsequent due process hearing, and if the parent prevails in the hearing, payment for the witness' expert testimony is a compensable cost paid by the school district as part of the prevailing party's attorney's fees and costs. In our experience, there is no shortage of evaluators ready, willing, and able to provide this service to parents and children with disabilities in this state.

Casting a vote in favor of this provision is a vote in favor of public education, and in favor of Connecticut's school districts. The current system imposing the burden of proof on the school district in every case leads to longer due process hearings and higher costs in every case that proceeds to a hearing. Knowing that it has the burden of proof, the school district must almost always trot out the full panoply of witnesses to defend every aspect of a child's Individualized Educational Program (IEP), often in response to a broad allegation that the child's program "does not offer a free appropriate public education". There are often between five and ten people in each case involved in providing services to the child, and the school district must present testimony from each witness, subject to cross examination by parent counsel each time. Full due process hearings that include testimony from parents, parent experts, and school district witnesses often take up 10-12 days of hearings over the course of many months. Some hearings have exceeded 20 days and have lasted well over a year. While these hearings are going on, district administrators and staff are diverted from the business of educating not only the student at issue in the hearing, but many other students as well. This has an impact on the quality of the educational programming provided to other children with and without disabilities. The Supreme Court expressed dismay that in the information presented to them, a due process hearing could cost \$8,000 to \$12,000. We estimate the average cost of a due process hearing in Connecticut at many times that number; the district's legal fees alone are often in the range of \$20,000 to \$30,000, and the parents' legal fees are usually more in the range of \$50,000 to \$75,000. Most districts can little afford the significant resources needed to adequately defend these cases, both in terms of attorney's fees and staff time, resources, and attention. While the allocation of the burden of proof is certainly not the only factor in this result, it is a significant contributing factor. Diverting resources into the hearing process necessarily diverts those resources away from improving instruction, paying teachers, providing professional development, training teachers in

newer and more effective methods of instruction, and improving outcomes for all students. In these challenging economic times, most school districts in the state would have to make a choice between hiring another teacher (or saving a teacher's job), and setting aside money in the budget to defend a due process hearing, especially factoring in the high costs of potentially having to pay the parent's attorney should the family prevail in the hearing.

The monumental costs associated with special education litigation have another, certainly unintended consequence in this state. Settlements of special education disputes increasing shift education funding dollars away from public education to private schools, where parents who are able to commit significant resources to private school education are able to unilaterally place children, and then sue the school district for reimbursement of the costs. Even if the school district believes that it has provided good services to the child at issue, the district often chooses the less expensive path of settlement, rather than the expensive and resource-consuming path of litigation. The dollars for these settlements come out of each town's education budget, and go directly to funding expensive private schools, many of which are not even approved by the state for the purpose of providing special education programming. If the school district agrees to make the placement advocated by the parents through the IEP, then part of the cost is passed back to the state to fund through the excess cost reimbursement grant. If the Committee is looking for a concrete step to take in the direction of limiting or reducing the excess cost reimbursement budget, this is one such step that will help to realign the hearing process and bring such costs under control.

Shifting the burden of proof to the school district in every case in Connecticut has had another, perhaps unintended, consequence that was noted by the Supreme Court in its decision. It intensifies what is already an adversarial process, making it the presumption and the prevailing attitude that the teachers are not providing adequate services, that their expertise is suspect and

subject to challenge by experts outside the school system. One hearing officer's decision some years ago reflected this back to the parties by stating that the district, who had submitted the testimony of its teaching staff in support of its program, "presented no experts" while the parents had presented "expert testimony". The world of special education is increasingly an emotional battlefield, where every person on the field believes that he or she represents the position that is in the best interests of the children. Shifting the burden of proof away from the party bringing the hearing request to the school district in every case only intensifies the adversarial nature of this process by immediately putting the teachers in a defensive posture. This is not where you want teachers to be when you want them to put forth their best efforts on behalf of all children. As pointed out by the Supreme Court, this runs counter to the presumption in the IDEA itself that our teachers are the experts who develop programs for children with disabilities in cooperation with parents and who should have our confidence. The Committee can recognize the expertise and the important contributions made by Connecticut's public school teachers and related services staff by passing this change to the statute, which would return the burden of proof issue to its proper balance. This is a vote in favor of public education.

Michelle C. Laubin, Esq.
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Farrell, B

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March 08, 2010

Education Committee
Room 3100, Legislative Office Building
Hartford, CT 06106

Attention: Sen. Thomas P. Gaffney and Rep. Andrew M. Fleischmann

Re: RB 5425

Dear Sen. Geffney, Rep. Fleischmann, and Education Committee Members:

Please accept this letter in lieu of my testimony in support of Raised Bill No. 5425. I would like to express my support for one section here. I wish to express support for Section 3 of the bill, which makes a critical change to place the burden of proof on the party requesting the hearing in a special education due process hearing. This change would bring Connecticut in line with the language of the federal Individuals with Disabilities Education Act (IDEA) and with the decision of the United States Supreme Court in the case of Schaffer v. Weast, 546 U.S. 49 (2005). While we understand that the parent advocacy community is opposed to this change, we would like to emphasize that placing the burden of proof on the party requesting the hearing is consistent with the fundamental principles of the American judicial system, which imposes the burden of proof on the plaintiff in almost every civil action. Simply put, if you sue a business or an individual in a tort claim, a products liability claim, or almost any other type of action, you as the plaintiff bear the burden of proving your allegations against that company or individual, regardless of any perceived inequity in the resources of the company or individual against whom you have brought your claim. As pointed out by the United States Supreme Court, in the absence of some compelling reason to the contrary, the same burden of proof can and should apply to plaintiffs in special education due process hearings. In fact, in most states, the plaintiff in the case, usually the parent, does bear the burden of proof, and this has not caused any major problems for parents in enforcing their rights under IDEA in those states where this is the rule.

While we understand that parents and their advocacy groups claim that placing the burden of proof on the plaintiff in a due process hearing is unfair because the school district has access to the information needed by the parent to pursue his or her claim, I must point out that this same argument was made to the United States Supreme Court and was rejected by a majority of the Court. The argument was rejected precisely because of the number of procedural safeguards contained within the IDEA that level the playing field for parents. Parents have the right to review all educational records concerning their child, and the school district may not discard or destroy educational records without

notification to the parents. Parents have the right to request an independent educational evaluation at the expense of the school district, and the school district must provide an outside independent expert to evaluate the child and provide an opinion that may potentially contradict the previous recommendations of the school district for that child. In Connecticut, given the array of expertise available to parents in the form of outside expert opinion, it is particularly likely that the parent will be able to force the school district to fund an outside expert opinion that contradicts opinions previously presented by the school district. When a hearing is requested, school districts must answer the charges made by the parents in writing, and must disclose to the parents all evaluations and information that the district intends to rely upon at the hearing, giving the parent access to all of the school district's information. These protections, according to the United States Supreme Court, ensure that the school district has no informational advantage over the parents and also ensures that the parent has access to expert witness testimony at the expense of the school district.

The Supreme Court also pointed out, not insignificantly, that placing the burden of proof on the school district to prove that the program offered to the student is appropriate has the effect of presuming that the program is inappropriate unless and until the school district proves otherwise. This runs completely contrary to the structure and intent of the IDEA itself. The function of the IDEA is to provide funding to states to provide appropriate special education programming to students with disabilities, and it does this by funding special education teachers, related service providers, and qualified administrative personnel who have the ability and the expertise to provide special education programming. We should not start out each query by assuming that these people, who work so hard for our districts and our children every day, have not done a good job or fulfilled their responsibilities. It not only sends the wrong message to the school personnel and to the parents of children with special needs, it is also counterproductive in the hearing process.

As noted by the Supreme Court, placing the burden of proof on the school district has the effect of making an already expensive litigation process all the more expensive by requiring districts to prove issues on which the parents have made only the barest allegations. Driving up the cost of dispute resolution runs counter to the spirit and intent of the law, which contains multiple provisions for resolving disputes quickly and without burden and expense, such as through mediation or resolution meetings occurring prior to the start of the due process hearing. Although the Supreme Court expressed dismay that the average due process hearing cost \$8,000-\$12,000 in a nationwide study, we would venture to guess that the average cost to a school district in Connecticut of litigating a full due process hearing (and winning, despite the uphill battle presented by the burden of proof) is closer to \$20,000-\$30,000. Our hearings are longer and more costly in this state as compared to other states where the burden of proof is on the plaintiff, and there is no evidence to suggest that these lengthy and costly due process hearings do anything to raise the bar for children with disabilities or improve outcomes for disabled children. There is evidence to suggest that the longer the hearing, the more the plaintiff's counsel benefits from the collection of attorney's fees, either from the parents of children with disabilities or from the school district if the parent prevails and collects attorney's fees

from the school district. In cases where the school district loses a due process hearing to the parent and must pay prevailing party attorney's fees, the total cost to the district can be close to \$100,000 independent of any costs associated with providing programming to the child such as tuition. Parent attorneys exploit this fact by encouraging parents to unilaterally place children in private schools and then demanding settlement payments equal to the district's cost of proceeding to a hearing, knowing that the school district will often pay such a demand to avoid a lengthy and costly battle with an uncertain outcome. This only contributes to the public perception that special education is becoming a sort of voucher system for paying for private school tuition for those who know how to exploit the system.

We urge the Committee to stand firm on the provision returning the burden of proof to the plaintiff in the due process hearing in the face of what we know will be opposition from parent advocates, and send the message to our schools that the legislature believes that school personnel do have the expertise to be able to provide excellent program for children with and without disabilities. Schools will repay this confidence by putting the money that would have been spent on needless litigation into providing programming for children and raising expectations, which will improve outcomes for children with disabilities.

Thank you for your consideration. I am available to answer questions or provide additional information upon request.

Sincerely,

Brian Farrell

Brian Farrell
ConnCASE

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Scata, D

(53)



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Testimony of
David Scata, Past President of ConnCASE
Education Committee
3/08/2010
Raised Bill No. 5425
AN ACT CONCERNING SPECIAL EDUCATION

Senator Gaffey, Representative Fleischmann, and Distinguished Members of the Education Committee; my name is David Scata, Past President of ConnCASE. ConnCASE represents over two hundred public school administrators of special education in the state of Connecticut.

I would first like to extend my appreciation to the committee to hear the opinion of ConnCASE and to thank the committee for hearing our concerns the past few years on a variety of issues related to special education.

I am here today to give testimony on Raised House Bill 5425

Raised Bill 5425 "An Act Concerning Special Education"

Sec. 4. Section 10-76d of the 2010 supplement to the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2010):

(h) For any school year commencing on and after July 1, 2010, if a child who has received special education and related services transfers from one school district to another school district after October first, the local or regional board of education under whose jurisdiction such child attended school or in whose district the child resided prior to such transfer and that provided special education pursuant to the provisions of sections 10-76a to 10-76g, inclusive, shall be financially responsible for the reasonable cost of special education and related services provided to such child until June thirtieth of the school year of such transfer. Such local or regional board of education shall be eligible for reimbursement of such special education costs pursuant to section 10-76g for such child. If a child transfers from one school district to another school district after October first, and such child was not receiving special education and related services prior to such transfer but the local or regional board of education of the school district to which such child has transferred determines that such child requires special education and related services, such school district shall be financially responsible for the reasonable cost of special education and related services provided to such child.

I am unclear to the intent of the language but my if my interpretation is clear, the preceding language drafted in the bill is not only confusing but would if enacted be

almost impossible to monitor fiscally and monitor the implementation of a student's IEP. What district personnel would be responsible for ensuring the fidelity of the students IEP, the previous school from where the student transferred or the receiving school? Would the receiving school have the same level of commitment or ownership knowing that the previous school was both fiscally and educationally responsible for the remainder of that school year? Does the regulations regarding residency which are very clear, now need to be rewritten in order to enact the new language proposed? As you can hear from my testimony the language is unclear yet the implications would be significant.

Sec. 3. Subdivision (1) of subsection (d) of section 10-76h of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2010):

(d) (1) In making a determination as to the issues in dispute, the hearing officer or board shall review the evidence presented in the hearing with the burden of proof on the party requesting the hearing.

I wish to express our support for Section 3 of the bill, which makes a critical change to place the burden of proof on the party requesting the hearing in a special education due process hearing. This change would bring Connecticut in line with the language of the federal Individuals with Disabilities Education Act (IDEA) and with the decision of the United States Supreme Court in the case of Schaffer v. Weast, 546 U.S. 49 (2005).

As pointed out by the United States Supreme Court, in the absence of some compelling reason to the contrary, the same burden of proof can and should apply to plaintiffs in special education due process hearings. In fact, in most states, the plaintiff in the case, usually the parent does bear the burden of proof, and this has not caused any major problems for parents in enforcing their rights under IDEA in those states where this is the rule.

While we understand that previously parents and their advocacy groups claim that placing the burden of proof on the plaintiff in a due process hearing is unfair because the school district has access to the information needed by the parent to pursue his or her claim, I must point out that this same argument was made to the United States Supreme Court and was rejected by a majority of the Court. The argument was rejected precisely because of the number of procedural safeguards contained within the IDEA that level the playing field for parents. Parents have the right to review all educational records concerning their child, and the school district may not discard or destroy educational records without notification to the parents. Parents have the right to request an independent educational evaluation at the expense of the school district, and the school district must provide an outside independent expert to evaluate the child and provide an opinion that may potentially contradict the previous recommendations of the school district for that child.

When a hearing is requested, school districts must answer the charges made by the parents in writing, and must disclose to the parents all evaluations and information that the district intends to rely upon at the hearing, giving the parent access to all of the school

district's information. These protections, according to the United States Supreme Court, ensure that the school district has no informational advantage over the parents and also ensures that the parent has access to expert witness testimony at the expense of the school district.

The Supreme Court also pointed out, not insignificantly, that placing the burden of proof on the school district to prove that the program offered to the student is appropriate has the effect of presuming that the program is inappropriate unless and until the school district proves otherwise. This runs completely contrary to the structure and intent of the IDEA itself.

Thank you,

David Scata

Past President
ConnCASE

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CONNECTICUT

Association for Behavior Analysis
The Voice of Behavior Analysis in Connecticut

PO Box 138 • Milford CT • 06460-0138 • www.ctaba.org

March 8, 2010

To Whom This May Concern,

The Connecticut Association for Behavior Analysis (CTABA) is a professional organization that seeks to assist in the development and advancement of the field of behavior analysis within the state of Connecticut through research, education, and dissemination of information. As a professional organization, CTABA is dedicated to promoting the theoretical, experimental, and applied analysis of behavior across a wide array of applications and audiences. At this time, CTABA represents 185 credentialed professionals in applied behavior analysis (ABA). Seventy-five percent of those credentialed are Board Certified Behavior Analyst with either a master's (BCBA) or doctoral degree (BCBA-D). The other twenty-five percent of credentialed professionals hold bachelor's degrees plus five courses in behavior analysis (BCaBAs).

CTABA is in support of HB 5425 Section 2 which states, "local and regional boards of education shall provide applied behavior analysis services to those students with autism spectrum disorder whose individualized education plan or plan pursuant to Section 504 of the Rehabilitation Act of 1973 requires such services" (Sec. 2, a).

ABA is a well-developed discipline in the field of developmental disabilities, with over 900 research studies published over the past 20 years on autism and related disorders. ABA has "established standards for evidence-based practice, distinct methods of service, recognized experience and educational requirements for practice, and identified sources of requisite education in universities" (www.bacb.com). The Behavior Analysis Certification Board is a non-profit organization responsible for credentialing professionals with ABA. A credentialed person in ABA must have, at a minimum, five university courses in behavior analysis and at least 1000 hours of applied experience supervised by a BCBA or a BCBA-D.

It is essential that school districts are provided with clear guidelines with regards to which professionals meet the educational requirements of an applied behavior analyst. School districts that hire unqualified persons to work with students with autism and related disorders risk lawsuits from parents, as a result

of poor application of ABA methods. More importantly, students receiving services by unqualified persons may not experience the same level of treatment success as those who receive services from those qualified in ABA. In fact, research shows that three-year old students who receive early intensive behavioral intervention using ABA are 50% more likely to participate in a normal first grade classroom and have an IQ score in the normal range by the time they are in first grade than those who do not receive ABA services (Lovass, 1987). By hiring qualified providers of ABA using the standard of the BACB, school districts could ensure best-practice methods and the best possible treatment success for these students.

In closing, your support for HB 5425 Section 2 will ensure students with autism and other developmental delays receive optimal treatment from professionals with sufficient education and experience in applied behavior analysis.

Sincerely,

Elizabeth C. Nulty, MS, BCBA

Secretary, CTABA

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McCormick, J
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Jennifer L. McCormick, M.S, ED, BCBA
15 Iris Street
Cheshire, CT 06410

3-8-10 Hearing – Testimony

I am here in support of HB 5425, section 2.

- I am dually certified as both a regular education elementary school teacher grades K through 6th for the state of Massachusetts as well as a Board Certified Behavior Analyst.
- My training to become a teacher was vastly different than my training to become a behavior analyst. Very different, yet ultimately complimentary. I am a better teacher because I have been trained as a behavior analyst, and a better behavior analyst because of my experiences as a teacher. Today, my job is to collaborate with special education teachers to utilize my skills as a behavior analyst in conjunction with their skills as special educators. If I had not been trained to be a behavior analyst my teacher training alone would be completely insufficient for me to be able to design and supervise a comprehensive ABA program for any youngster with special education needs.
- Currently I consult within public schools directly to teachers who service children with disabilities in a number of school districts throughout Connecticut. Some of the teachers I consult to conduct mainstream classroom and the rest run a self-contained classroom. Regardless of the population of students in the room the goal is always that every child is *learning*. To be able to teach any amount of children of any ability you need to have the knowledge and skill set to provide the techniques I learned within my education degree and my graduate degree in behavioral education.
- It is imperative that the professionals working with our special education students have the specific credentials of a BCBA or BCABA. People providing ABA services without the expertise that these credentials hold puts every child with disabilities at risk for not getting the education and future that they deserve. Not only does it jeopardize these children's' futures, but not having qualified professionals with these credentials puts school systems in a place to be targeted for parental lawsuits. Especially when these are the parents of a child who was previously required to be serviced by a BCBA within a birth to three program.
- Section 2 will not only clarify the credentials for helping to service children with autism but it will help to ensure that these students have the best possible education and future provided to them.

Testimony

My name is Christina Calabro, resident of Ridgefield, CT and a mother of 2 children with Special Needs. Today I am testifying, asking you to please support section 2 of HB 5425. Autism has affected my family and I learned the hard way that we didn't see the results my child was capable of achieving until their program changed and became under the direction of a BCBA. My oldest child is the perfect case study that your ROI can be huge (quality of life changing) when an appropriate program is put in place under the supervision of qualified professionals.

This bill will insure that our children will receive behavior analysis from qualified professionals. Anything less is a disservice not only to my child—but to classmates, teachers, therapists, the school nurse, the principal, the bus drivers and the tax payers in our community. I have seen first-hand how a behavior program that was supervised by an un-qualified professional failed. We lost precious time—time that we will never get back. Hiring employees who are not qualified to provide these services also put school districts at risk of lawsuits. Please support section 2 of HB 5425.

Today I am also asking you to please oppose section 3 of HB 5425. The State of Connecticut has this correct; please do not support placing the burden of proof with the party who asked for the hearing, which in almost all cases is the parent. As education advocates, we parents fight for our children to have and maintain an appropriate education program. When this does not happen we are left with no other choice but to file for due process. We would fail as parents if we didn't do whatever is in our power for our children to have what is due to them. By changing the shift of burden you make it that much more difficult for us to do our jobs.

Please support section 2 and please oppose section 3 of HB 5425. Thank you for listening.

5425

000957
Lent, c
H9

March 6, 2010

Christopher Lent
12 Randazzo Road
Columbia, CT 06237

Re: Raised H.B. No. 5425, An Act Concerning Special Education, Reg. Session 2010

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

I'm writing to object to the provision in Raised H.B. No. 5425 which would place the burden of proof on the party requesting the hearing. Although a complaining party typically bears the burden of proof, the Individuals with Disabilities Education Improvement Act is atypical from other civil rights legislation in that an affirmative, beneficiary-specific obligation is placed on the providers of public education. To alter settled Connecticut law would not only be unfair and place an onerous burden on families advocating for a "free appropriate public education," it would likely result in unintended consequences, such as increased costs to the State.

According to the Connecticut State Department of Education, two hundred and fifteen (215) Special Education Hearings were scheduled during the 2008-2009 school year.¹ A summary of those hearings is as follows:

- 215 Special Education cases during the 2008-2009 school year
- 186 of the cases filed by parents/students, or 86 ½ %
- 29 of the cases filed by school districts, or 13 ½ %
- 143 of the cases were settled by the parties, or 66 ½ %
- 58 of the cases were withdrawn or dismissed, or 27%.
- 10 of the cases the school district was prevailing party, or 4 ½ %
- 4 of the cases the parent/student was prevailing party, or < 2%
- 60 of the cases were pro se, or 28%

By shifting the burden of proof on the party requesting the hearing, which statistics indicate more than eight-six (86%) percent of the time it's the parents, school districts would have less incentive to settle the disputes before the hearing commences. If more disputes require full resolution before the Hearing Officer, a greater financial burden could be placed on the State. For example, special education hearings are on an accelerated time line, so additional Hearing Officers may be necessary to ensure due process within the mandated time constraints.

School districts are in a far better position to demonstrate that they've fulfilled its statutory obligations. Current law already places the burden of production on the party requesting the hearing, so to shift the burden of proof as well onto the moving party, which is almost always the

¹ Connecticut State Department of Education, Special Education Hearings, March 6, 2010, available at <http://www.sde.ct.gov/sde/cwp/view.asp?a=2626&q=320712>.

parent, would be unfair. As the statistics reveal, families have prevailed less than two percent (2%) of the time when their disputes are adjudicated before a Hearing Officer. In contrast, school districts have prevailed in more than twice the number of hearings. By no means does this data suggest parents have the upper hand since the districts currently have the burden of proving the appropriateness of the child's program or placement (or the district's proposed program or placement).

I respectfully request the members of the Education Committee reconsider the efficacy of altering settled law when statistics fail to suggest inequities in the special education procedural rules requiring legislative action to redress.

Sincerely,

Christopher Lent
clent929@gmail.com

49

Case	Student filed	District filed	Pro Se	Prevailing Party		withdrawn/ dismissed	settled
				Student	District		
09 002	x		x			x	
09 003		x	x			x	
09 008	x						x
09 009	x		x		x		
09 010	x						x
09 012	x					x	
09 018	x						x
09 019	x						x
09 021	x					x	
09 022	x						x
09 031	x						x
09 034	x						x
09 036		x	x		x		
09 040	x						x
09 042	x						x
09 043	x						x
09 046	x						x
09 049	x						x
09 051		x					x
09 059	x						x
09 060	x						x
09 071	x						x
09 077	x						x
09 078	x						x
09 080	x						x
09 081	x		x			x	
09 082	x						x
09 083		x	x				x
09 084	x						x
09 085	x						x
09 086	x						x
09 088	x		x			x	
09 089	x						x
09 093	x		x				
09 095	x		x				x
09 0104	x					x	
09 0106	x			x			
09 0109	x						x
09 0110	x						x
09 0113		x		x			
09 0115	x						x
09 0119	x						x
09 0121	x		x			x	
09 0122	x		x			x	
09 0129	x						x
09 0130	x						x
09 0131	x						x
09 0133	x						x
09 0134	x		x				x
09 0136	x		x				x
09 0140		x					x
09 0141	x					x	
09 0142	x					x	
09 0143	x						x
09 0148	x		x			x	
09 0149	x		x				x
09 0154	x		x			x	
09 0155	x						x
09 0159	x					x	
09 0160	x						x
09 0163	x		x				x
09 0167	x						x
09 0170	x						x
09 0174	x					x	
09 0175		x	x			x	
09 0177	x					x	
09 0182	x		x				x
09 0183	x						x
09 0184	x						x
09 0185	x						x
09 0186	x						x
09 0192	x		x			x	
09 0194	x						x

2008-2009 Special Education Decisions
 Connecticut State Department of Education

Case	Student filed	District filed	Pro Se	Prevailing Party		withdrawn/ dismissed	settled
				Student	District		
09 0195	x						x
09 0200	x					x	
09 0202	x					x	
09 0206	x		x				x
09 0214	x						x
09 0217	x		x			x	
09 0218	x						x
09 0219		x					x
09 0221		x					x
09 0223	x		x		x		
09 0224	x						x
09 0225	x					x	
09 0226	x		x		x		
09 0232		x					x
09 0234	x					x	
09 0235	x						x
09 0240	x						x
09 0242	x			x			
09 0244	x		x				x
09 0245	x						x
09 0246	x						x
09 0247	x						x
09 0249	x		x			x	
09 0255	x		x				x
09 0257	x						x
09 0261		x					x
09 0262		x				x	
09 0263		x				x	
09 0264	x						x
09 0270		x	x			x	
09 0271	x						x
09 0273	x				x		
09 0274	x						x
09 0276	x						x
09 0284	x						x
09 0290	x						x
09 0293		x					x
09 0298	x						x
09 0299		x				x	
09 0303	x					x	
09 0304	x		x		x		
09 0305	x					x	
09 0306	x						x
09 0308	x						x
09 0314	x					x	
09 0318	x						x
09 0325	x						x
09 0329	x						x
09 0331	x		x			x	
09 0334	x					x	
09 0336	x						x
09 0343	x						x
09 0344	x			x			
09 0345	x			x		x	
09 0353		x	x				x
09 0358	x						x
09 0360	x		x			x	
09 0361	x						x
09 0362	x						x
09 0363	x						x
09 0364	x		x				x
09 0369	x		x			x	
09 0371	x					x	
09 0373	x		x				x
09 0376	x						x
09 0377	x						x
09 0383	x						x
09 0389	x						x
09 0391	x		x			x	
09 0394		x				x	
09 0396	x		x			x	
09 0397	x						x
09 0404	x						x

2008-2009 Special Education Decisions
 Connecticut State Department of Education

Case	Student filed	District filed	Pro Se	Prevailing Party		withdrawn/ dismissed	settled
				Student	District		
09 0405	x		x				x
09 0407	x		x			x	
09 0409	x						x
09 0418	x					x	
09 0419	x						x
09 0420	x						x
09 0428		x					x
09 0430	x						x
09 0433	x		x		x		
09 0435		x	x		x		
09 0437	x						x
09 0438	x					x	
09 0439	x					x	
09 0440	x					x	
09 0441	x					x	
09 0444		x	x			x	
09 0445		x					x
09 0451		x					x
09 0452	x						x
09 0453	x						x
09 0454	x						x
09 0459	x						x
09 0460	x						x
09 0467	x					x	
09 0468	x					x	
09 0469	x						x
09 0470	x						x
09 0472	x						x
09 0473	x		x				x
09 0477		x	x				x
09 0478		x	x				x
09 0482	x						x
09 0483		x					x
09 0489		x					x
09 0494	x		x			x	
09 0495	x		x				x
09 0496	x					x	
09 0497	x						x
09 0498	x						x
09 0503	x						x
09 0505	x						x
09 0506	x						x
09 0508	x						x
09 0509	x						x
09 0511	x		x				x
09 0513	x						x
09 0516	x		x			x	
09 0518	x		x			x	
09 0519	x		x				x
09 0520	x		x				x
09 0522		x	x				x
09 0523	x		x			x	
09 0525	x					x	
09 0534	x						x
09 0535	x					x	
09 0536		x	x		x		
09 0537	x		x		x		
09 0539	x						x
09 0540	x						x
09 0541	x					x	
09 0542	x		x			x	
09 0543	x						x
09 0545	x						x
09 0547	x		x				x
09 0550	x						x
09 0551	x						x
09 0549	x		x				x
09 0554	x						x
09 0555	x		x				x

THE LAW OFFICE OF CHRISTINA D. GHIO, LLC
A law firm dedicated to representing the interests of children

P.O. Box 808
Windsor, CT 06095

Testimony of Christina D. Ghio
in opposition to
Section 3 of HB 5425, An Act Concerning Special Education

Education Committee
March 8, 2010

My name is Christina D. Ghio. I am an attorney in private practice with a focus on representing children, including children with special education needs. I have over a decade of experience representing children in special education, child welfare, and juvenile justice matters.

I write today to oppose Section 3 of HB 5425, An Act Concerning Special Education. By placing the burden of proof on the party requesting the hearing, this provision shifts the burden in special education due process hearings from the school to, in most cases, the parent. Such a statutory change would have a dramatic negative impact on children with disabilities, leaving them in educational programs that are not adequate to meet their needs.

The Individuals with Disabilities Education Act (IDEA) was passed because Congress found that the educational needs of children with disabilities were not being met. 20 U.S.C. § 1400(c)(2). It is the obligation of the state and local educational agencies to provide a free appropriate public education to all children with disabilities, referred to as FAPE. 20 U.S.C. § 1412 (a)(1).

Current regulations of the State Department of Education place the burden of proving the appropriateness of the child's program or placement on the school district. See CONN. AGENS. REGS. 10-76h-14. HB 5425 is a dramatic and unnecessary departure from this long-standing regulation.

Some may argue that such a change is necessary under *Schaffer v. Weast*, 546 U.S. 49 (2005), that is simply not the case. While the *Schaffer* decision held that the burden of proof in administrative proceedings under IDEA is placed on the party seeking relief, it explicitly declined to address the issue of whether states can choose to place the burden on schools. Thus, states are free to continue to choose to place the burden on school districts.

Following the decision, Dr. Berry J. Sternberg, then Commissioner of the State Department of Education, issued Circular Letter C-9 in which she acknowledged that *Schaffer* does not require Connecticut to change its regulations, or the law, regarding the burden of proof. Commissioner Sternberg stated that "the standard in Connecticut articulates a valid state policy that school districts are in a better position to defend the appropriateness of an IEP."

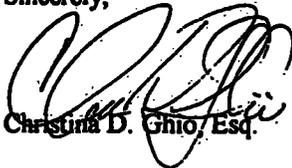
Indeed, placing the burden of proof on school districts is not only a valid state policy; it is the best state policy because it recognizes the significant imbalance of power that exists in the area of special education. As Commissioner Sternberg explained in Circular Letter C-9 "[d]istricts are in control of following the procedural requirements of the IDEA and of planning and offering

an IEP which provides a child with an opportunity to derive meaningful educational benefit, the two criteria courts look at to determine whether an IEP is appropriate." School district administrators, teachers, and staff are trained in the requirements of IDEA. With very few exceptions, school district employees conduct the evaluations of the child. The planning and placement team meetings, at which the child's individualized education plan is developed, are conducted by the school and, generally speaking, the only person not employed by the school district is the parent. When the district offers an individualized education plan, that plan goes into place unless the parent files a due process request. When hearings do occur, almost all of the witnesses called upon to testify are employees of the school district. Finally, school districts are represented by counsel but most parents simply cannot afford to hire an attorney. Placing the burden of proof on the school district, as current regulation does, simply recognizes this reality. Section 3 of HB 5425 would reverse the current regulation, place the burden on parents, and result in the denial of appropriate educational services to children with disabilities.

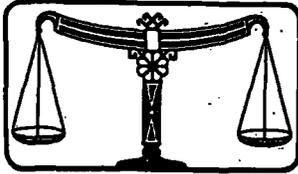
Finally, because the very same proposal being made in HB 5425 was made last year in the context of fiscal relief to municipalities, it is important to address the suggestion that this would save money. To the extent that any cost savings would be derived, they would be achieved only by creating such an imbalance that parents abandon any effort to obtain appropriate educational services for their children and by depriving children with disabilities of necessary educational services they would receive under our current regulations. In my view, that is simply unconscionable, even in the most desperate of fiscal times.

For all of these reasons, I urge you to reject Section 3 of HB 5425.

Sincerely,



Christina D. Ghio, Esq.



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March 8, 2010

Education Committee
CT General Assembly
Legislative Office Building
Hartford, CT 06106

Attention: Sen. Thomas P. Gaffey and Rep. Andrew M. Fleischmann

Re: Raised H.B. No. 5425, Session Year 2010
Emailed to chris.calabrese@cga.ct.gov and also sent via first class mail

Dear Sen. Gaffey, Rep. Fleischmann, and the Education Committee members,

Please accept this letter as testimony for my support of Section 2, and opposition to Section 3 of H.B. No. 5425: AN ACT CONCERNING SPECIAL EDUCATION.

Section 2 of this proposed bill must be passed. Reasonable people agree, and the laws mandate that public schools must use evidence based practices for students receiving special education services. Studies show that applied behavior analysis (ABA) improves outcomes individuals with autism. Hence, the individuals who use ABA with our students must be properly trained.

Section 3 of this proposed bill will significantly harm students with disabilities. **The Burden of Proof must not be changed!!!!** I speak on behalf of my clients, students with disabilities and their families, most of who are unable to speak for themselves, and who do not comprehend the gravity of the consequences this bill would have on their ability to receive an appropriate education. Please remember that the purpose of special education is...

(a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(b) To ensure that the rights of children with disabilities and their parents are protected; (§ 300.1 IDEA 2004).

The purpose is NOT to cut costs nor weigh the competing needs of municipal budgets against costs of educating our most vulnerable children.

Connecticut must continue keep the burden of proof on the School District – the party who possesses and controls the information upon which the decisions are made. Do not shift it to the parents who may have tremendous difficulty obtaining the information. This gross imbalance of power

necessitates placing the burden of proof on the school district, the party with greater access to necessary evidence, based on the fundamental principles of fairness. The goal of IDEA 2004 is to provide a free appropriate public education to children with disabilities. As we know, if the parents and the school district reach an impasse over the contents of an IEP, either side can request due process; however, practically speaking, it is almost always the parents who initiate due process because the school district typically can simply withhold the needed services, another illustration of this imbalance of power. This places an onerous burden on families to prove that the program is not appropriate, without the school having to assume any burden to prove that their program is appropriate.

Thank you very much for your consideration of this point of view. I implore you not to change the current regulations in Connecticut in connection with burden of proof. I also ask that you use properly trained staff to work with students with Autism.

Respectfully yours,

Anne Eason

Attorney Anne I. Eason
Law Offices of Anne I. Eason, LLC
10 Wall Street
Norwalk, CT 06850
www.spedlawyers.com

(25)



The Connecticut Occupational Therapy Association
370 Prospect Street, Wethersfield, CT 06109

To: Education Committee, Connecticut General Assembly
From: Mary-Ellen Johnson, MAHSM, OTR/L
President - Connecticut Occupational Therapy Association
Email: Johnsonm@sacredheart.edu phone (203) 396-8210
Date: March 8, 2010

Written testimony RE:

H. B. No. 5425 (RAISED) An Act Concerning Special Education Section

Sen. Thomas P. Gaffey, Rep. Andrew M. Fleischmann, and Members of the Education Committee:

My name is Mary-Ellen Johnson and I am the president of the Connecticut Occupational Therapy Association. We welcome this opportunity to offer comments and share our serious concerns with the Education Committee of the State of Connecticut General Assembly regarding the language of H. B. No. 5425 (RAISED) An Act Concerning Special Education, Section 2 (a) and (b). We support the intent of this legislation, but respectfully request that the bill be amended to address the following concerns.

Occupational Therapy Practitioners Use Applied Behavioral Frames of Reference in Practice

Our first concern is that the appropriation of a common theoretical base of knowledge and techniques based on behavioral theory, and the exclusive application of such by a particular group of practitioners, behavior analysts, would effectively limit the legitimate application of evaluation and intervention techniques included in occupational therapy's education and permitted by our scope of practice.

Behavioral theory is the basis of evaluation and intervention methods used by practitioners certified by the Behavior Analyst Certification Board, but the analysis of behavior and the application of interventions to change behavior are not exclusive to those who consider themselves behavior analysts. Behaviorism is one of many theoretical frameworks taught in all

occupational therapy programs. Indeed, behaviorism is part of the knowledge base of many professions. Occupational therapy practitioners use applied behavioral frames of reference in practice, and have incorporated behavior modification in their interventions since the 1940's (Cole, & Tufano, 2008). Activity and environmental analysis has been at the heart of occupational therapy practice since its foundation. In addressing the needs of children and adults with special needs, occupational therapists evaluate what is interfering with successful performance, whether as it pertains to the person, the task itself, or to the environment. Providing interventions which include altering the environment or changing the kinds of motivations that elicit a person's engagement in the day to day things that he or she needs to do to be successful is well within the education and scope of practice of occupational therapy. This bill would limit the practice of occupational therapists licensed in Connecticut.

Limiting Use of These Techniques to Behavioral Analysts will Restrict Access

Our second concern is that the appropriation of a common theoretical base of knowledge and techniques based on behavioral theory, and the exclusive application of such by a particular group of practitioners, behavior analysts, would result in limitations in consumer access to behaviorally based services, provided by other disciplines. Sec 2 (b) indicates that there is concern for an anticipated shortage of practitioners certified by the Behavior Analyst Certification Board. This bill would limit consumer access to behaviorally based services provided by occupational therapists.

Consumers Should have Access to a Range of Services

It is important that consumers have available a range of services that can address behaviorally based problems that interfere with daily functioning, and that these services are provided by qualified professionals. We have no objection to legislative language that defines the qualifications of those who call themselves behavior analysts, but we oppose language, as in Sec 2 (a), that restricts the common methods of "design, implementation and evaluation of environmental modifications, using behavioral stimuli and consequences, including the use of direct observation, measurement and functional analysis of the relationship between the environment and behavior, to produce socially significant improvement in human behavior" to the practice of those certified by the Behavior Analyst Certification Board. As recently as 2008 an editorial appeared in the journal *Behavior and Social Issues* that addressed the initiative taken towards licensure by the Association for Behavior Analysis: International. It pointed to the difficulty of taking the approach of attempting to carve out actions that only licensed behavior analysts can perform "because many other disciplines use and in some cases are licensed to use the interventions included in model scope of practice documents" (Mattaini, p. 116). Our final concern, then, is that this legislation benefits practitioners who are certified by the Behavior Analyst Certification Board, or supervised by someone who is certified, but limits the range of options available to consumers, including the legitimate services of occupational therapists.

Proposed Amendment Language to H. B. No. 5425 (RAISED)

We request the following changes in the legislative language:

~~Strikeout~~ = Proposed text to be deleted

Underline = Proposed text to be added

Sec. 2. (NEW) (*Effective July 1, 2010*) (a) On and after July 1, 2012, local and regional boards of education shall provide applied behavior analysis services to those students with autism spectrum disorder whose individualized education plan or plan pursuant to Section 504 of the Rehabilitation Act of 1973 requires such services.

Such services ~~shall~~ may be provided by a person who is (1) subject to the provisions of subsection (b) of this section, ~~licensed by the Department of Public Health or certified by the Department of Education and such services are within the scope of practice of such license or certificate,~~ or (2) certified by the Behavior Analyst Certification Board as a behavior analyst or assistant behavior analyst, provided such assistant behavior analyst is working under the supervision of a certified behavior analyst or (3) is a licensed or certified professional whose body of knowledge and scope of practice includes the analysis of tasks and environments and the application of interventions and environmental modifications which may be behaviorally based.

For purposes of this section, "applied behavior analysis" ~~means~~ includes the design, implementation and evaluation of environmental modifications, using behavioral stimuli and consequences, including the use of direct observation, measurement and functional analysis of the relationship between the environment and behavior, to produce socially significant improvement in human behavior.

(b) If the Commissioner of Education determines that there are insufficient licensed or certified personnel available to provide applied behavior analysis services in accordance with the provisions of subsection (a) of this section, the commissioner may authorize the provision of such services by persons who: (1) Hold a bachelor's degree in a related field; (2) have completed (A) a minimum of nine credit hours of coursework from a course sequence approved by the Behavior Analyst Certification Board, or (B) coursework that meets the eligibility requirement to sit for the board certified behavior analyst examination; and (3) are supervised by a board certified behavior analyst.

Thank you for your consideration of our concerns.

References

Cole, M. B., & Tufano, R. (2008). *Applied theories in occupational therapy: A practical approach*. Thorofare, NJ: Slack Incorporated

Mattaini, M. (2008). Editorial: Licensing behavior analysts. *Behavior and Social Issues*, 17(2), 115-118.

5425

Lambert, B 000969



More Than 10 Years of Families Helping Families

March 8, 2010

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Education Committee
 Room 3100, Legislative Office Building
 Hartford, CT 06106

Re: HB 5425

Dear Members of the Education Committee:

My name is Beth Lambert and I am the President of Connecticut Families for Effective Autism Treatment (CT FEAT). I speak on behalf of my family as the mother of a 16 year-old boy that is severely autistic and on behalf of the over 300 families CT FEAT represents.

There are two separate provisions contained within this bill upon which I wish to comment – section 2 and section 3. CT FEAT supports section 2 but does not support section 3 of HB 5425.

The efficacy of applied behavior analysis is a direct function of the rigor of its application. The comprehensive application of ABA requires understanding and insight that can only be gained through the emersion in the subject provided by intensive graduate level study and controlled overseen application under the tutelage of a fully certified behavior analyst.

Too often, we have heard from parents whose children have not made progress in their applied behavior analysis program because the supervisor in charge did not have the proper training. To lose time to an inadequate program has great negative implications for children with autism. Children with autism have been suspended or removed from a public school because they had severe negative behaviors. Having a qualified behavior analyst to create and monitor a student's behavior plan may mean the difference between a child being educated at his local school or being placed at a segregated facility.

In 2002, Dr. Kathleen Dyer Ph.D., CCC-SLP, BCBA did a research study that looked at the relationship between the number of essential components a child received in their programming and the overall quality of life outcomes for the children and their families. One of the essential components was therapy delivered and supervised by individuals trained in behavior analysis. The study found that there was, in fact, a correlation between quality of life outcomes and the quality of ABA programs. This bill will enable school systems to more easily determine qualified individuals. CT FEAT commends and supports section 2 of HB 5425.

However, section 3 of this bill that puts the burden of proof of efficacy of a program on the parent is a giant step backwards for the special needs children of Connecticut. The special education process is daunting to many of the parents of special needs children. Parents are frequently ill equipped to understand the needs of the child and the process of meetings and the array of acronyms is dizzying to the parent not familiar with the special education establishment. The education professionals are steeped in the process. They are usually trying to not only balance the needs of many children on minimal resources; they are frequently under tremendous pressure to push special education children into the lowest cost alternative.

The individual child is lost without a strong parent advocacy. This process is already heavily stacked against the family of the special needs child. The school district's team in the special education process is well versed in the process and in the goals of the individual district. These teams are prepared and practiced; most have participated in dozens if not hundreds of PPT's. This compared to the parents who frequently alone, not fully comprehend their own rights, the process or how to influence its outcome. At CT FEAT, we see parents every day that are daunted and intimidated by the process as it stands today. In Connecticut, many professionals have worked very hard to provide programs and services for our children; nonetheless, we see families unable to secure appropriate services for their special needs child under the current system. Tilting the balance further in favor of the school districts is unconscionable.

Section 3 will increase the need for consultants and lawyers to the families of handicapped children at a cost many cannot finance. It will in cases of less demanding parents result in children stuck in ineffective programs.

In these difficult economic times, it is important that we spend education dollars wisely. The provision in HB 5425 requiring proper certification of ABA professionals will make that education process more effective with little or no cost to the education system. We must however be sure that in these difficult times, we don't abdicate our responsibility to our most vulnerable citizens.

Thank you for this opportunity and your attention.

Sincerely,

Beth Lambert

Beth Lambert, President

5425-
(30)

000971
Sottolano

TESTIMONY REGARDING RAISED BILL NO. 5425

Dear Committee Members,

My name is Dr. Donn Sottolano. I am the Director of Behavior Services for Area Cooperative Educational Services, referred to by most people as "ACES".

I would like to express my gratitude to you for allowing me this opportunity to express my support of Bill No. 5425. In particular, I would like to offer testimony in support of Section 2 of the Bill referring to the provision of behavior analysis services to students with autism and related disorders. I have never enjoyed the act of public speaking, so let me apologize before hand for any nervousness that you see over the next few minutes. I would like to address 2 points and finally share some examples that hopefully make these points salient.

The fact that I am here speaking to you today, despite my public speaking angst, is testimony to how important and impassioned I feel about the delivery of behavior technology to disabled students, parents, and educators. A great many students with autism are unable to speak for themselves as a result of communication disorders which is one of the three disabling conditions that they live with. Therefore it is incumbent upon us as professionals, parents, and legislators, in the act of speaking for children with autism spectrum disorders, to have a firm grasp and a clear understanding of what 20-plus years of research has demonstrated – applications of behavior technology has shown itself to be the single most effective intervention for improving outcomes for children with autism and related disorders.

Point 1

Twenty-three years ago ACES invited a 'world renowned' expert in the field of autism and developmental disabilities, Dr. Richard Foxx, to come to CT. and help the agency understand how to better service students with disabilities. Dr. Foxx spent 2-weeks at ACES working in the schools, showing teachers how to reduce behavior problems, teach new behaviors, and structure effective learning environments. At the end of this 2-week period, Dr. Foxx offered the administrators and Peter Young, Executive Director of ACES, what he believed (personal communications), amongst a number of ideas, a linchpin recommendation – hire someone with training and expertise in behavior analysis as part of your staff. Dr. Foxx understood that children with autism and developmental disabilities frequently present with complex learning and behavior issues. The complexity of issues in turn requires that staff be prepared both

conceptually and with sound skills in order to provide an appropriate education. For children with autism and related disorders the appropriate use of evidence-based behavior technologies will provide the best opportunity for successful integration within the family, the school, and the community.

I started with ACES 22-years ago. At that time there was no Behavior Analysis Certification Board (BACB), so I would have been considered as working within my "scope of practice" at that time. With the support of administrators and each of three Executive Directors ACES currently employs 16 Behavior Analysts, 12 of whom are board certified and 4 who are completing their competencies for certification. What has this meant to the students, many of whom are on the autism spectrum, who attend ACES schools, who we go out and work for across many school districts within CT., and finally in the home programs we support? The evidence is clear that the ability of ACES to provide behavior analysis by competently trained professionals and the ability of ACES to train other professionals, para professionals, and parents has dramatically effected growth in skill acquisition and reduction in behavior problems for children with autism and other disabilities.

It is my hope that this committee will follow the same path by supporting Section 2 of Bill 5425 supporting the provision of behavior analysis services by highly qualified professionals. In no other profession within the field of education, e.g., speech language pathology, occupational therapy, social work, nursing, is non qualified persons practice in the absence of training and supervision.

Point 2

Finally, I would like to briefly describe two examples that speak to the complexity, and significant impact, of the application of behavior technology with children with autism spectrum disorders.

First, is the case of a young girl who was unable to attend her public school without her mother being present. The young girl constantly held onto her mother's arm, leg, and clothing. Her mother could not leave her side. She wore her long brown hair down over her face to avoid seeing or being seen by anyone. This is a young girl who could very easily been sent out of district, perhaps to a residential placement, perhaps out of state. No one could get this young girl to look, interact, touch materials, or speak. It took my behavior analyst and me 18 month's to help her re-enter her special education classroom. By this time she was speaking to others, doing her class work, and her mom was home. What did it take for us to help her? Every speck of behavior analysis that we had ever learned, staff that was willing to learn new strategies

even though many of them seemed counter intuitive, and finally, a school that wanted this to work for the child.

Second, is a case of a young boy, (6 years old) who would run across his living room head first into the wall. He had done this so many times that his skull had a network of hairline fractures. His school behavior was ameliorated, at this time, though the use of a 2:1 staff ratio, the removal of instructions at the first sign of trouble, and a lot of edible treats to keep him happy. After 19-months of behavior intervention (including communication training, academic work, life skills training, and behavior management for self-injury) his head banging has been reduced to near zero levels. His educational program is now housed in an ABA setting where his academic production has been significant and life skills continue to improve, e.g., dining skills and toileting. Although this program started in the home, the school was an essential component in achieving success. In the absence of competent professionals trained in applied behavior analysis this young boy's future would be uncertain at best. Now the parents and school have great expectations for him.

I could go on and on with stories about children with autism and other disabilities who given competent, qualified behavior staff makes strides no one thought possible, but I hope this testimony is sufficient in making the point that competency in applied behavior analysis is critical in the education and treatment of children with autism and other disabilities. The ACES tag line, in our ABA program, seems an appropriate ending for this testimony: "Everything you do matter's"; but then I would add if you know what to do it will matter a lot more.

Sincerely,

Donn Sottolano, Ph.D.
Board Certified Behavior Analyst
Director ACES Behavior Services Center
dsottolano@aces.org

5425

000974
Damato (39)

Meaghan Damato, MS, CCC-SLP

March 8, 2010

Testimony in support of HB 5425 Section 2

My name is Meaghan Damato and I am a Speech/Language Pathologist in a CT public school. I am currently enrolled in coursework online to become a Board Certified Behavior Analyst. The courses are accessible, affordable and high quality. In combination with my supervision from a BCBA and this coursework, I have already been able to apply strategies to my daily speech and language therapy session.

It is critical to note that my training as a Speech Language Pathologist did not prepare me to implement, design or suggest behavior intervention plans as designated by a planning and placement team. To ensure the highest level of efficacy that the children of the state of CT deserve, it is imperative that a BCBA or BACBA create and execute behavioral strategies.

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National Commission for Certifying Agencies

Standards for the Accreditation of Certification Programs



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Revised November 2006 (editorial only)
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Preamble

INTRODUCTION

The National Commission for Certifying Agencies (NCCA) accredits certification organizations complying with its Standards. The mission of NCCA is to help ensure the health, welfare, and safety of the public through the accreditation of certification programs/organizations that assess professional competence. The NCCA uses a peer review process to establish accreditation standards, to evaluate compliance with these standards, to recognize organizations/programs which demonstrate compliance, and to serve as a resource on quality certification. The purpose of NCCA accreditation is to provide the public and other stakeholders the means by which to identify certification programs that serve their competency assurance needs. NCCA Standards address the structure and governance of the certifying agency, the characteristics of the certification program, the information required to be available to applicants, certificants, and the public, and the recertification initiatives of the certifying agency. NCCA is a separately governed accreditation arm of the National Organization for Competency Assurance (NOCA), a membership association of certification organizations providing technical and educational information concerning certification practices.

Since the Standards were first issued in the late 1970s, NCCA has observed fundamental changes in the nature, scope, and importance of certification. First, the certification community has expanded dramatically to include a broader variety of occupational and professional credentials offered by non-profit organizations, for-profit entities, governmental agencies, and industries. Second, it is increasingly common for a certification organization to offer multiple certification programs. Third, the certification community has expanded internationally. Fourth, the certification and testing communities have introduced the computer as a means of both developing items and new assessment formats, as well as administering assessments. This change has also led to the implementation of modern testing methodologies to capitalize on the power of the computer to score and scale the assessment instruments. Fifth, an increasing number of certification programs are recognized by state and provincial regulatory authorities, a practice that expands the traditional definition of certification.

In keeping with its service to the public and to various other stakeholders of professional certification, and in order to address fundamental changes in certification, NCCA undertook the review and revision of its accreditation standards. In 1997, NCCA established two Task Forces to address the feasibility of revising the accreditation Standards to address the changes described above and to ensure the currency of the Standards for the foreseeable future. The Task Forces were eventually combined at the end of 1997 to form a Steering Committee.

In August 1998, NCCA obtained approval from the NOCA Board of Directors to conduct fundraising activities in support of the continued work of the Steering Committee. As an outcome of this effort, NCCA hired an independent project manager.

During 1999 and early 2000 the Steering Committee conducted activities through the formation of four Task Forces, each focusing on a different set of accreditation standards: (1) Purpose, Governance, and Resources (2) Responsibilities to Stakeholders (3) Assessment Mechanisms, and (4) Recertification. The Task Forces represented a cross section of currently accredited groups, testing services, and other professionals with expertise in certification.

Members of the Steering Committee and the Task Forces reported to NCCA in November, 1999, and to the NOCA Board and Membership in December, 1999. A complete report of the Standards Revision Project was prepared and submitted to NCCA by the Steering Committee in March, 2000. After NCCA review and revision of the Steering Committee's report a draft of these documents was made available for public comment. Following numerous revisions and review periods throughout 2001 the draft Standards were presented to the organizations accredited by the NCCA for ratification in January, 2002. The Standards were approved in February, 2002.

In November of 2006, the Commission approved a revised definition of "Public Member." This was considered an editorial revision.

STRUCTURE AND DEVELOPMENT OF THE STANDARDS.

The Standards focus on certification programs and are organized into five sections: (1) Purpose, Governance, and Resources, containing five Standards (2) Responsibilities to Stakeholders, containing four Standards (3) Assessment Instruments, containing nine Standards (4) Recertification, containing two Standards, and (5) Maintaining Accreditation, containing one Standard.

To earn or maintain accreditation by NCCA, the certification program must meet *all* Standards and provide evidence of compliance through the submission of required documentation.

The statements describing the Standards are numbered consecutively. Accompanying each Standard are *Essential Elements*, which are directly related to the Standard and specify what a certification program must do to fulfill requirements of the Standard.

A second subsection under each Standard is called *Commentary*. The Commentary section clarifies terms, provides examples of practice that help explain a Standard, or offers suggestions regarding evidence that must be documented to demonstrate compliance. NCCA reserves the right to revise the Essential Elements and the Commentary sections in response to changes in certification practice.

The development of the Standards was guided by the following assumptions:

1. A number of previous NCCA Standards, such as the requirement that the certifying agency be non-governmental, nonprofit, and national in scope, are restrictive. Further, by opening the accreditation process to include certification programs in for-profit organizations, NCCA more effectively achieves its public service mission.
2. The appropriate unit of accreditation is the certification program rather than the certifying organization. In fact, NCCA accreditation previously required that all certification programs offered by an agency meet all standards in order for the agency to achieve accreditation.
3. NCCA accreditation should be awarded for a period of five years for the initial program certification. If organizations or agencies apply for NCCA accreditation of additional programs following accreditation of the original program(s), any new programs will be accredited until the date the organization's initial accreditation expires. All of an organization's accredited programs will be eligible for renewal on the same the five-year renewal cycle.
4. Autonomy in the management and administration of certification protects certification programs from undue influence. Autonomy is required in order for certification programs to serve stakeholder interests, primarily those of consumers of professional services. However, since certification programs take different forms for different professions and occupations, a variety of structures may be effectively employed to prevent undue influence from competing interests.

5. The term stakeholder has been used to refer to candidates and the public, as well as to members of a profession, occupation, or regulatory body. The term denotes the primary interest of the public and other consumers of the certification program. The term also encompasses certificants and the entities offering certification, as well as educators, and employers. It is appropriate to acknowledge the legitimate influence of all stakeholder bodies.
6. The NCCA Standards pertaining to assessment instruments should be consistent with the Standards for Educational and Psychological Testing (American Educational Research Association, American Psychological Association, and National Council on Measurement in Education, 1999), as well as other standards and guidelines related to certification accreditation developed by specific professions, occupations, governmental agencies, and international organizations, or certification activity criteria more generally, such as (but not limited to) Principles of Fairness: An Examining Guide for Credentialing Boards (Council on Licensure Enforcement and Regulation and the National Organization for Competency Assurance, 1993) and the Uniform Guidelines on Employee Selection Procedures (Equal Employment Opportunity Commission, Civil Service Commission, U.S. Department of Labor, and U.S. Department of Justice, 1978).
7. Recertification is valuable for all certification programs. Demonstrating continuing competence through a variety of recertification mechanisms is in the best interests of both the public and the discipline certified.

Standards

PURPOSE, GOVERNANCE, and RESOURCES

Standard 1

The purpose of the certification program is to conduct certification activities in a manner that upholds standards for competent practice in a profession, occupation, role, or skill.

Essential Element:

- A. It is the responsibility of the certification program applying for NCCA accreditation to identify the population being certified and to provide justification for the appropriateness of its certification activities. Typically, a certification program issues a credential or title to those certified. If the applying program does not, an explanation should be provided explaining why the issuance of a credential or title is not appropriate to the profession, occupation, role, or skill.

Commentary:

- A. Suggested evidence to document that the Standard has been met may include a mission statement, bylaws, articles of incorporation, a policy and procedures document, a governing committee charter, or candidate brochures.

Standard 2

The certification program must be structured and governed in ways that are appropriate for the profession, occupation, role, or skill, and that ensure autonomy in decision making over essential certification activities.

Essential Elements:

- A. The certifying program must show that the governance structure, policies, and procedures that have been established protect against undue influence that could compromise the integrity of the certification process.
- B. The governance structure, policies, and procedures must provide for autonomy in decision making regarding important aspects of the certification program such as eligibility standards; the development, administration, and scoring of the assessment instruments; selection of personnel; and operational processes.
- C. The development, administration, and scoring of assessment instruments must promote the purpose of the certification program.
- D. To avoid conflicts of interest between certification and education functions, the certification agency must not also be responsible for accreditation of educational or training programs or courses of study leading to the certification.

Commentary:

- A. The appropriate structure and governance of a certification program will reflect the interests of the general public in the credential. In traditional forms of professional or occupational certification, public interest requires direct protection of essential certification decisions from undue influence. Such protection is especially important when a certification program is sponsored by a professional membership association or proprietary entity. In these cases it is appropriate that the certification program's structure and governance protect the integrity of essential certification decisions.

When the certification program involves a proprietary product or service, the issue of undue influence is different. In these cases it is assumed that the proprietor has a clear and reasonable self-interest in preventing external or competing influences from diminishing the quality of the certification. It is recognized that the public is often not a direct consumer of the activities of the certified population. The public interest will be adequately protected when the needs of the proprietor, employers, or purchasers who rely on the credential provide significant direction over certification policy and decision making.

- B. Pressure to adjust certification standards either to limit the number of certificants or to reduce or elevate the established standard by changing requirements could interfere with the maintenance of standards established for a given certification.
- C. Certification programs may satisfy the requirement for autonomy of the governing body or governing committee in a number of ways. Incorporation of the certifying agency as an independent unit usually ensures autonomy. The bylaws of a parent organization may be constructed so that certification program governance and decision-making are defined as the responsibility of a specific unit of the organization with complete authority over all essential certification decisions. A governing committee may be given such authority in the policies and procedures and organizational chart of a corporation.
- D. In addition to not *accrediting* programs leading to the initial certification, the certification organization must not require that candidates complete that organization's program for certification eligibility. If a certification organization *provides* an educational program (including but not limited to primary education, exam preparation courses, study guides), the organization must not state or imply that: 1) this program is the only available route to certification; or 2) that purchase or completion of this program is required for initial certification.
- E. Suggested evidence to document that the Standard has been met may include a mission statement, bylaws, articles of incorporation, business plans, a policy and procedures document, a governing committee charter, or organizational charts.

Standard 3

The certification board or governing committee of the certification program must include individuals from the certified population, as well as voting representation from at least one consumer or public member. For entities offering more than one certification program, a system must be in place through which all certified populations are represented, with voting rights, on the certification board or governing committee.

Essential Elements:

- A. A system or structure must be established for ensuring appropriate stakeholder involvement by designating certain representative positions on the governing body. To ensure a balance of

program input, the governing body may implement a rotating system of representation over a set period of time.

- B. The certification program must establish bylaws and/or policies and procedures for the selection of individuals who serve on the board or governing committee. This information must show that the selection of these individuals prevents inappropriate influence from a parent or outside body.

Commentary:

- A. It is important that stakeholders (e.g., the public and other consumers, employers, regulators, and certificants) are represented on the body(ies) that sets policies regarding the certification program, including activities related to eligibility and the development, administration, and scoring of the assessment instrument.
- B. Suggested evidence to document that the Standard has been met may include a mission statement, bylaws, articles of incorporation, business plans, a policy and procedures document, a governing committee charter, or organizational charts.
- C. The public member is considered by NCCA to be a person who represents the direct and indirect users of certificants' skills/services. Because this may be defined very broadly, a rotating system for representation of various publics may be implemented over time. The public member may be a professional, but should not have similar credentials to the certificants. The public member should not be a member of a related profession or a profession that provides services that are complementary to certificants' services. The NCCA recommends, but does not require, that the public member has been or is a potential a consumer of the certificants' skills or services. It is also recommended that public members have experience with public advocacy.

The public member should not be:

- A current or previous member of the profession encompassed by the certification programs of the certification organization.
- A member of a related profession or a profession that provides complementary services to the certificants' services.
- An employer or an employee of individuals in the profession encompassed by the certification programs of the certification organization.
- An employee of an individual certified by the certification organization or of an employer of individuals in the profession encompassed by the certification programs of the certification organization.
- An employee of any certification organization.
- Currently deriving more than 5% of their total income from the profession encompassed by the certification programs of the certification organization.

The public member should not have:

- Derived in any of the five years preceding my appointment as a public member on the governing body more than 5% of their total income from the profession encompassed by the certification programs of the certification organization.
- Worked for or provided contract services to the certification organization at any time during the five years preceding my appointment as a public member on the governing body.

Standard 4

The certification program must have sufficient financial resources to conduct effective and thorough certification and recertification activities.

Essential Element:

- A. Financial reports of the certification program must demonstrate adequate resources available to support ongoing certification and recertification processes.

Commentary:

- A. The certification program should be able to document that monies used for the certification program are readily available.
- B. Suggested evidence to document that the Standard has been met includes financial statements for the certification program.

Standard 5

The certification program must have sufficient staff, consultants, and other human resources to conduct effective certification and recertification activities.

Essential Elements:

- A. Key staff and non-staff consultants and professionals must possess adequate knowledge and skill to conduct certification program activities.
- B. The certification program must have adequate resources to conduct the activities (e.g., processing of applications, administering the assessment instrument, storage of records) of the certification program.

Commentary:

- A. Documentation of resource availability and activity occurrence does not mean that every certification program must have its own office or building; in some cases, all activities could be adequately handled with services from a testing company, consultants, or management service.
- B. Suggested evidence to document that the Standard has been met may include resumes or curriculum vitae of key staff, non-staff consultants, and professionals, and associated organizational charts describing the inter-relationships among the individuals providing services to the certification program.

RESPONSIBILITIES to STAKEHOLDERS**Standard 6**

A certification program must establish, publish, apply, and periodically review key certification policies and procedures concerning existing and prospective certificants such as those for determining eligibility criteria; applying for certification; administering assessment instruments; establishing performance domains, appeals, confidentiality, certification statistics, and discipline; and complying with applicable laws.

Essential Elements:

- A. Published documents that clearly define the certification responsibilities of the organization must include the following:

- The purpose of the certification program
 - Eligibility criteria and application policies and procedures
 - Materials outlining all examination processes and procedures
 - A detailed listing and/or outline of the performance domains, tasks, and associated knowledge and/or skills
 - A summary of certification activities (number of candidates examined, pass/fail statistics, and number of individuals currently certified) for each program
 - Discipline, nondiscrimination, and confidentiality policies and procedures
 - Appeals policies and procedures
- B. Confidentiality policies must (a) ensure that candidate application status and examination results are held confidential, and (b) delineate the circumstances under which this information may be disclosed or made public.
- C. Policies and procedures must be published and must include guidelines by which candidates may question eligibility determination, assessment instrument results, and certification status.
- D. Disciplinary policies must include procedures to address complaints that may concern conduct that is harmful to the public or inappropriate to the discipline (e.g., incompetence, unethical behavior, or physical/mental impairment affecting performance). These policies must ensure appropriate treatment of sensitive information and fair decision making.

Commentary:

- A. Publications concerning eligibility criteria, applications, assessment instruments, appeals, discipline, confidentiality, etc., are required to inform candidates and other stakeholders about program policies.
- B. Applicable laws and regulations include nondiscrimination, disabilities, and other issues which may affect fairness to candidates or protection for consumers.
- C. Procedures for requesting accommodations for disabled candidates should be stated clearly and published in an appropriate agency document. The process should include mechanisms that will ensure that proper evidence is submitted to the agency to assist the agency in making a determination regarding the requested accommodation.
- D. Any accommodation provided should be reasonable and not compromise the validity and reliability of the assessment instruments.
- E. Suggested evidence to document that the Standard has been met may include a policy and procedures manual, a candidate handbook, and any written documents or forms regarding procedures for obtaining approval for an accommodation.

Standard 7

The certification program must publish a description of the assessment instruments used to make certification decisions as well as the research methods used to ensure that the assessment instruments are valid.

Essential Element:

- A. Procedures related to assessment instruments must address development and validation, eligibility requirements, and administration (e.g., availability and location, fees, reporting of results).

Commentary:

- A. Suggested evidence to document that the Standard has been met may include a candidate handbook, brochures about the certification program, and other public documents.

Standard 8

The certification program must award certification only after the knowledge and/or skill of individual applicants has been evaluated and determined to be acceptable.

Essential Elements:

- A. If any current certificants (at the time the application for accreditation is made) were granted certification without having to meet the examination requirements established for certification, a rationale must be provided to explain how the competence of those individuals was evaluated and found to be sufficient. The period during which such test exemptions were granted must have been terminated before the certification program is eligible for accreditation.
- B. Once a program is accredited, "grandfathering," or any other procedure for granting a credential in the absence of evaluating the knowledge and/or skill of an individual, is not acceptable.

Commentary:

- A. Grandfathering is generally seen as a conflict with stakeholder interests. It is used from time to time in licensure as a means of protecting the rights of individuals who entered a profession prior to its regulation and should not be excluded from the right to practice. Professional certification does not normally carry such potential to restrict the right to practice.
- B. Suggested evidence to document that the Standard has been met may include a policy and procedures document, a candidate handbook, brochures about the certification program, and other public documents.

Standard 9

The certification program must maintain a list of and provide verification of certified individuals.

Essential Element:

- A. The certification program must maintain a list of current and previous certificants.

Commentary:

- A. The certification program should provide and verify that a certificant possesses currently valid certification upon request from any member of the public. Policies governing verification should allow disclosure of whether or not the certificant is currently in good standing, without communicating other information which may violate the confidentiality rights of certificants or applicants.
- B. The certification program may discard information about previous certificants after a reasonable time period when such information is no longer valuable to the certification program's stakeholders.
- C. Suggested evidence to document that the Standard has been met may include a policy and procedures document, a candidate handbook, brochures about the certification program, directories in which certificant names are published, and other public documents.

ASSESSMENT INSTRUMENTS**Standard 10**

The certification program must analyze, define, and publish performance domains and tasks related to the purpose of the credential, and the knowledge and/or skill associated with the performance domains and tasks, and use them to develop specifications for the assessment instruments.

Essential Elements:

- A. A job/practice analysis must be conducted leading to clearly delineated performance domains and tasks, associated knowledge and/or skills, and sets of content/item specifications to be used as the basis for developing each type of assessment instrument (e.g., multiple-choice, essay, oral examination).
- B. A report must be published that links the job/practice analysis to specifications for the assessment instruments.

Commentary:

- A. No single method exists to define performance domains, tasks, and associated knowledge and/or skills. Appropriate strategies include (a) committees of representative experts to define performance domains and tasks and associated knowledge and/or skills, including a review of related practice- or job-based information, or a review of the information from a previous study (b) rating scales (e.g., frequency and importance) to identify and select critical performance domains, tasks, and associated knowledge and/or skills (c) collection of job/practice information using logs, observations of practice, and/or interviews, or (d) review of proposed performance domains, tasks, associated knowledge and/or skills, and rating scales by an independent panel of experts.
- B. Validation of performance domains, tasks, and associated knowledge and/or skills is typically accomplished by conducting a survey of current certificants and/or individuals providing services or performing a job consistent with the purpose of the credential. It is important to sample widely within the profession, occupation, or role, or among those who use or support a product, to ensure representation in terms of major practice areas, job titles, work settings, geography, ethnic diversity, gender, and work experience. Stakeholders such as educators, supervisors, and employers may be included, as appropriate. An adequate sample size should be used to ensure that the estimated level of measurement error is defensible.
- C. Analysis of ratings information collected in the survey should determine how and to what degree the performance domains, tasks, and associated knowledge and/or skills relate to the purpose of the credential. Linkages to the content of the assessment instruments should be based on the use of ratings data. Empirical algorithms or other psychometric methods used to analyze or combine ratings from different scales should be specified. Analyses of demographic information collected from survey participants should also be examined to evaluate representativeness of the findings.
- D. A table of specifications should be prepared for each assessment instrument specifying the weighting of performance domains, tasks, and associated knowledge and/or skills to be included. The weighting system should be based primarily on data collected from survey participants, with informed review and interpretation provided by a panel of subject-matter experts. Decision rules used to eliminate performance domains, tasks, and associated knowledge and/or skills from the specification table should be explained. The specifications may also include instructions to the item writers to be used in developing assessment instruments.

- E. Because rapid changes may occur in knowledge and/or skills and in technology, it is important that certification programs periodically review performance domains, tasks, and associated knowledge and/or skills in the specifications to ensure that they are current. Since it is impossible to specify with precision how often the review should be conducted, each certification agency should develop its own timeframe and rationale. For existing certification programs, any changes between new specifications and previous specifications should be noted and explained.
- F. Suggested evidence to document that the Standard has been met requires a complete report summarizing the results of the job/practice analysis, which may include:
- A description of the background and experience of subject-matter experts and professionals who participated in various phases of the job/practice analysis
 - Identification of the psychometric consultants or organization used to conduct the job/practice analysis or important phases of it
 - A description of methods used to delineate performance domains, tasks, and associated knowledge and/or skills
 - A copy of the job analysis survey, including all instructions, rating scales, open-ended questions, and background demographic information collected from participants
 - A description of the survey's sampling plan and its rationale
 - Documentation of survey results, including return rate, analysis of ratings data, algorithms or other psychometric methods used to analyze or combine ratings data, and a rationale supporting representativeness of survey findings
 - A table of specifications for each assessment instrument specifying weighting of the performance domains, tasks, and associated knowledge and/or skill, along with any decision rules used to eliminate any of these elements from the table of specifications
 - Date of the study and description of a plan to update periodically the job/practice analysis
- G. The formal report of the job/practice analysis study to be provided to demonstrate compliance with this standard may be considered by the organization to be a confidential document, and therefore, the organization may decide to not make it widely available. However, in these cases, the organization must publish and make available a summary of the study or statement(s) describing the exam specifications development process for dissemination to prospective candidates and other interested members of the public.

Standard 11

The certification program must employ assessment instruments that are derived from the job/practice analysis and that are consistent with generally accepted psychometric principles.

Essential Elements:

- A. Assessment instruments, including assessment items, exhibits, instructions to examinees, scoring procedures, and training procedures for administration of assessments, must be products of an appropriately designed and documented development process.
- B. The content sampling plan for test items or other assessment components must correspond to content as delineated and specified in the job/practice analysis.
- C. An ongoing process must exist to ensure that linkage between the assessment instruments and the job/practice analysis is maintained, as assessment components are revised and replaced over time.

This linkage between assessment content and job/practice analysis must be documented and available for review by stakeholders.

- D. Certification programs must follow a valid development process that is appropriate for assessment instruments.
- E. A systematic plan must be created and implemented to minimize the impact of content error and bias on the assessment development process. Assessment content must be reviewed by qualified subject matter experts.

Commentary:

- A. Documentation for assessments should include a detailed description of the delivery format for each portion of the assessment and the type of response required of candidates. Developers should take reasonable steps to ensure that modes of presentation and response are justified by job relatedness. If the form of the assessment instrument is to be delivered on computer, the documentation of item selection rules or display features should be described. Certification programs should document how background and experience factors of the candidate population were considered in selecting item types or other assessment formats.
- B. Qualifications of subject matter experts, assessment development professionals, content reviewers, and others involved in assessment development should be appropriate to the content area tested and assessment procedures used and documented.
- C. Training provided to item writers, item reviewers, and others who produce assessment content should be structured, delivered, and documented in a professional and consistent manner.
- D. The development and assembly process for assessment instruments should be documented.
- E. The development process should include pilot testing of new items with a representative sample of the target population, with revision based on statistical analysis of results, where appropriate.
- F. Certification programs should document procedures used to examine the performance of items or other assessment components and describe the criteria used to identify components for revision or removal from the assessment.
- G. The size of the item pool must be sufficient to sample specifications for the assessment and to provide adequate item exposure control to safeguard the security and integrity of the item bank and test forms, particularly in relation to computer-based administration.
- H. Provision should be made for monitoring continued validity of each assessment item and assessment form during the period in which they are active.
- I. Suggested evidence to document that the Standard has been met may include: specifications for the assessment instruments; training materials, agendas, and reports on item development; procedures for the development of assessment instruments; and technical reports.

Standard 12

The certification program must set the cut score consistent with the purpose of the credential and the established standard of competence for the profession, occupation, role, or skill.

Essential Elements:

- A. Cut scores must be set using information concerning the relationship between assessment performance and relevant criteria based on the standard of competence.

- B. A report must be published documenting the methods and procedures used to establish the standard of competence and set the cut score, along with the results of these procedures.

Commentary:

- A. No single method exists to set cut scores. Appropriate strategies include the use of judges or panelists who focus their attention on assessment content by rating each item or task, or who consider the candidates or their completed assessments.
- B. The raters in a cut score study must understand the purpose of the assessment, the standard of competence, and how to apply the cut score process that is to be used. Raters should have a sound basis for making required judgments. If data are available, estimates of the effects of setting the cut score at various points should be provided.
- C. The cut score study should be documented in sufficient detail to allow for replication, including full descriptions of the procedures followed, results, and how they should be interpreted.
- D. Suggested evidence to document that the standard has been met includes a report of the cut score study that addresses the following:
- Overview of the cut score process
 - Qualifications of those designing and implementing the process
 - Number of panelists, manner of selecting the panelists, and their qualifications
 - Material used
 - Data collection procedures
 - Descriptions or conceptualizations developed by the panelists
 - Data collection activities
 - Meeting agendas
 - Any adjustments made to the cut score by a governing body or policy group
- E. This formal cut score report may be considered confidential by the organization; however NCCA accreditation review requires that a formal report of the cut score be submitted with the application. In these cases, the organization must make available a summary of the study or statement regarding the study to prospective candidates and other interested stakeholders. The summary can be in journal articles, candidate bulletin, or other information accessible to candidates and stakeholders.

Standard 13

The certification program must document the psychometric procedures used to score, interpret, and report assessment results.

Essential Elements:

- A. The certification program must describe procedures for scoring, interpreting, and reporting assessment results.
- B. For responses scored by judgment, developers must document training materials and standards for training judges to an acceptable level of valid and reliable performance. Any prerequisite background or experience for selection of judges must also be specified.

- C. Candidates must be provided meaningful information on their performance on assessment instruments. Such information must enable failing candidates to benefit from the information and, if psychometrically defensible, understand their strengths and weaknesses as measured by the assessment instruments.
- D. Reports of aggregate assessment data in summarized form must be made available to stakeholders without violating confidentiality obligations.

Commentary:

- A. Certification programs are responsible for establishing quality control procedures that regularly monitor the precision of calculations used to compute assessment scores and their conversion to standardized, equated, or scaled scores, if performed.
- B. The certification program should publish an explanation of the appropriate uses and misuses of reported score information.
- C. Suggested evidence to document that the Standard has been met may include descriptions of scoring procedures, training documents, quality control procedures, and sample score reports for passing and failing candidates.
- D. Evidence in support of essential element D should include documentation of aggregate assessment data to the various stakeholder groups on interest. For example, details of the aggregate assessment data might be appropriately reported to representatives of the program sponsor (e.g. a board or committee) and documented in the NCCA Accreditation application. In addition, however, some aggregate data must be available to the public and the certificant population, at a minimum addressing the number of candidates and the number of individuals attaining the certification credential during a specified period of time.

Standard 14

The certification program must ensure that reported scores are sufficiently reliable for the intended purposes of the assessment instruments.

Essential Element:

- A. Certification programs must provide information to indicate whether scores (including any subscores) are sufficiently reliable for their intended uses, including estimates of errors of measurement for the reported scores. Information must be provided about reliability or consistency of pass/fail decisions. When appropriate, information should be provided about the standard error of measurement or similar coefficients around the cut score.

Commentary:

- A. The level of reliability required for an assessment instrument depends on the type of assessment device and the purpose for which scores will be used.
- B. Different types of assessment instruments require different methods of estimating reliability. Reliability should be estimated using methods that are appropriate for characteristics of the assessment instruments and the intended uses of the scores.
- C. Suggested evidence to document that the Standard has been met may include:
 - Methods used to assess reliability of scores (including subscores), and the rationale for using them
 - Characteristics of the population involved (e.g., demographic information, employment status)

- A reliability coefficient, an overall standard error of measurement, an index of classification consistency, an information function, or other methods for estimating the consistency of scores
- Standard errors of measurement or other measures of score consistency around the cut score
- Information about the speededness of performance on the assessment instruments
- Any procedures used for judgmental or automated scoring
- The level of agreement among judges

Standard 15

The certification program must demonstrate that different forms of an assessment instrument assess equivalent content and that candidates are not disadvantaged for taking a form of an assessment instrument that varies in difficulty from another form.

Essential Elements:

- A. Equating or other procedures used to ensure equivalence and fairness must be documented, including a rationale for the procedure used.
- B. When assessment instruments are translated or adapted across cultures, certification programs must describe the methods used in determining the adequacy of the translation or adaptation and demonstrate that information attained from adapted and source versions of the assessment instruments produce comparable test scores and inferences.

Commentary:

- A. Different ways exist to link assessment scores, ranging in rigor from strict equating models to judgmental methods.
- B. When certification programs use more than one mode of administration (e.g., paper/pencil and computer-based testing), it is important to document equivalence of score information and any score adjustment method used to achieve equivalence.
- C. A rationale should be provided for the reporting scales selected and methods used to determine score scales.
- D. The scales on which scores are reported should not encourage finer distinctions among candidates than can be supported by the precision of the assessment instruments. The scale values should be chosen in a manner that avoids confusion with other scales that are widely used by the same population of candidates.
- E. Raw scores should not be reported except under one or more of the following circumstances:
 - Only one form of the assessment instrument is to be offered
 - Scores on one form will not be compared with scores on another form
 - Raw or percentage scores on all forms are comparable, or
 - Raw or percentage scores are reported in a context that supports intended interpretations.
- F. When scaling scores, the stability of the score scale should be checked periodically. When indicated, steps should be taken to minimize score misinterpretations. If a change to the assessment instrument or to the composition of the candidate population alters the meaning of

scores, it may be appropriate to rescale the scores to minimize confusion between the old and new scores, or in the absence of rescaling, to ensure that the differences between the old and new scores are clearly communicated to candidates and to other stakeholders.

- G. Certification programs should, whenever possible, conduct pilot studies prior to implementation of the adapted version of the assessment instruments. Field study research should be part of a program of ongoing maintenance and improvement. Tryout and field studies should be part of a larger research program to ensure comparability and quality of cross-cultural information on the assessment instruments.
- H. Suggested evidence to document that the Standard has been met may include:
- A description of the methods used to determine that different forms of an assessment instrument measure equivalent content and ensure that candidates are not disadvantaged for taking a form of the assessment instrument that varies in difficulty from another form
 - An equating and scaling report

Standard 16

The certification program must develop and adhere to appropriate, standardized, and secure procedures for the development and administration of the assessment instruments. The fact that such procedures are in force should be published.

Essential Element:

- A. Assessment instruments must be administered securely, using standardized procedures that have been specified by the certification program sponsor:

Commentary:

- A. Non-standardized administration procedures may adversely influence scores as well as the inferences drawn from these scores. When administration procedures deviate from the expected, such irregularities must be thoroughly documented.
- B. Chief examiners and proctors should be thoroughly trained in proper administration of the assessment instruments in an effort to minimize the influence of test administration on scores. Similarly, all candidates should have equal access to preparatory materials and instructions available from the sponsor.
- C. Certification programs are responsible for protecting the integrity of assessment information. This responsibility requires a security program that restricts access to assessment information to authorized personnel.
- D. Administration sites should offer similar conditions, such as adequate lighting, comfortable seating, and an environment free from noise and other distraction.
- E. Suggested evidence to document that the Standard has been met may include:
- Candidate handbook or similar document
 - Chief examiner and/or proctor manual
 - Quality control policy and procedures documents
 - Security procedures manual

Standard 17

The certification program must establish and document policies and procedures for retaining all information and data required to provide evidence of validity and reliability of the assessment instruments.

Essential Element:

- A. Policies and procedures must ensure that items and forms of the assessment instruments are stored in a medium and method that emphasizes security, while being accessible to authorized personnel. Such policies must not only describe procedures for a secure system but also address actions required of personnel.

Commentary:

- A. Policies should establish a time period for retention of physical or electronic copies of forms of the assessment instruments and of reports and analyses related to the development process. The documents may be used in matters relating to challenges concerning scores, validity, or other essential issues. Documentation of the secure retention of assessment instruments and development information (e.g. cut score studies, technical reports) must be provided as part of the NCCA Application Accreditation. Note here how this information is securely maintained.
- B. Suggested evidence to document that the Standard has been met should include policy and procedures documents.

Standard 18

The certification program must establish and apply policies and procedures for secure retention of assessment results and scores of all candidates.

Essential Element:

- A. Organizational policy must determine the length of time that assessment results will be retained.

Commentary:

- A. Organizational policy concerning the length of time that assessment results will be retained and score reports provided should be stated clearly in information provided to candidates.
- B. Certification program policy should prevent assessment results and other personal information from the candidate's file being provided to a third party without the candidate's documented permission. The policy should be stated in information provided to candidates.
- C. Suggested evidence to document that the Standard has been met should include policy and procedures documents.

RECERTIFICATION

Standard 19

The certification program must require periodic recertification and establish, publish, apply, and periodically review policies and procedures for recertification.

Essential Elements:

- A. The published policy must contain a statement of the basis and purpose for recertification and all recertification requirements.
- B. The rationale for the recertification time interval must be included in the policy.
- C. Recertification policies and procedures in handbooks, guides, and/or electronic media must be published and made available to certificants and the public.

Commentary:

- A. The goals of recertification can differ for different organizations. Examples might include: to assess core knowledge and skills; to assess knowledge and skills in specific areas of practice; to encourage continued professional development; to ensure maintenance of competence; to promote lifelong learning; etc. An organization's recertification policy should clearly state the purpose of recertification.
- B. An explanation of consequences for the certificant when recertification requirements are not met should be provided.
- C. In the case of a certification program involving a proprietary product or service, the proprietor may describe recertification on the basis of a systemic process of upgrading the product or service in connection with steps taken to withdraw technical support provided by the proprietor for the previous version of the product.
- D. Suggested evidence to document the Standard has been met should include renewal policy and procedure documents and a candidate handbook.

Standard 20

The certification program must demonstrate that its recertification requirements measure or enhance the continued competence of certificants.

Essential Element:

- A. If the purpose of recertification is to *measure* continued competence of certificants, then the certification program must substantiate the validity and reliability of the assessment instruments used to measure continued competence.
- B. If the purpose is to *enhance* continued competence of certificants, then the certification program must demonstrate how the policy contributes to professional development of the individual certificant.

Commentary:

- A. If an assessment method is used (e.g. self-assessment, third-party assessment, peer review, up to date version of the initial certification exam, portfolio), then the application and documentation must include an explanation of the validity and reliability of the assessment or process.
- B. If the enhancement method is used (e.g. continuing education, mentoring, clinical skills or practice improvement modules, institutional or web-based learning), then the application and

documentation must include the applicant's rationale for how the method(s) supports the professional development and enhances the competence of the certificant (e.g. how an enhancement method is related to an individual certificant's needs assessment; how the applicant evaluates the quality and relevance of the competency enhancement methods; whether the enhancement method includes a mechanism, such as a post-test, to assess whether certificant knowledge and/or practical skills have been enhanced.)

- C. Suggested evidence to document that the Standard has been met should include certification renewal policy and procedure documents and a candidate handbook.

MAINTAINING ACCREDITATION

Standard 21

The certification program must demonstrate continued compliance to maintain accreditation.

Essential Elements:

- A. The certification program must annually complete and submit information requested on the current status of the certification agency and its programs.
- B. The certification program must report any change in purpose, structure, or activities of the certification program.
- C. The certification program must report any substantive change in examination administration procedures.
- D. The certification program must report any major change in examination techniques or in the scope or objectives of the examination.
- E. The certification program must submit any information NCCA may require to investigate allegations of lack of compliance with NCCA Standards.

Glossary

Accommodation—

A reasonable modification in an assessment instrument or its administration made to compensate for the effects of a qualified disability without altering the purpose of the assessment instrument.

Accountability—

Responsibility of a certification board, governing committee, or other sponsor of a certification program to its stakeholders to demonstrate the efficacy and fairness of certification policies, procedures, and assessment instruments.

Accreditation—

1. **General use:** Approval of an educational program according to defined standards.
2. **As related to NCCA:** Status awarded to a certification program that has demonstrated compliance with the *Standards for the Accreditation of Certification Programs* set forth by the National Commission for Certifying Agencies.

Administrative Independence—

An organizational structure for the governance of a certification program that ensures control over all essential certification and recertification decisions without being subject to approval by or undue influence from any other body. See *Autonomy*.

Applicant—

An individual who declares interest in earning a credential offered by a certification program, usually through a request for information and the submission of materials. See *Candidate*.

Assessment Instruments—

Any one of several standardized methods for determining if candidates possess the necessary knowledge and/or skill related to the purpose of the certification.

Autonomy—

Control over all essential certification and recertification decisions without being subject to approval by or undue influence from any other body. Autonomy in the management and administration of certification enhances the ability of certification programs to serve stakeholder interests, primarily those of consumers of professional services. See *Administrative Independence*.

Bias—

IN THE CONTEXT OF SCORING: a systematic error in a score on an assessment instrument.

IN THE CONTEXT OF EXAMINATION FAIRNESS: may refer to the inappropriateness of content in the assessment instrument, either in terms of its irrelevance, overemphasis, or exclusion.

IN THE CONTEXT OF ELIGIBILITY AND RECERTIFICATION REQUIREMENTS: may refer to the inappropriateness or irrelevance of requirements for certification or recertification if they are not reasonable prerequisites for competence in a profession, occupation, role, or skill. See *Fairness*.

Candidate—

An individual who has met the eligibility qualifications for, but has not yet earned, a credential awarded through a certification program. See *Applicant*.

Certificant—

An individual who has earned a credential awarded through a certification program.

Certification—

A process, often voluntary, by which individuals who have demonstrated the level of knowledge and skill required in the profession, occupation, role, or skill are identified to the public and other stakeholders.

Certification Agency—

The organizational or administrative unit that offers and/or operates a certification program.

Certification Board—

A group of individuals appointed or elected to govern one or more certification programs as well as the certification agency, and responsible for all certification decision making, including governance.

Certification Committee—

A group of individuals appointed or elected to recommend and implement policy related to certification program operation. (See governing committee)

Certification Program—

The standards, policies, procedures, assessment instruments, and related products and activities through which individuals are publicly identified as qualified in a profession, occupation, role, or skill.

Commentary—

Comments, remarks, and observations that clarify terms, provide examples of practice that help explain a standard, or offer suggestions regarding evidence that must be documented to demonstrate compliance.

Content Domains—

The set of organized categories characterizing subject matter under which knowledge and skills may be represented in specifications for assessment instruments.

Consumer—

See also "Public Member"

Continuing Competence—

The ability to provide service at specified levels of knowledge and skill, not only at the time of initial certification but throughout an individual's professional career. See Recertification and Continuing Education.

Continuing Education—

Activities, often short courses, that certified professionals engage in to receive credit for the purpose of maintaining continuing competence and renewing certification. See Recertification and Continuing Competence.

Cut Score—

A specific score on an assessment instrument or instruments at or above which passing decisions are made and below which failing decisions are made.

Discipline—

A formal, published process for the enforcement of standards governing the professional behavior (i.e., ethics) of certificants.

Eligibility Requirements—

Published criteria, often benchmarks for education, training, and experience, with which applicants must demonstrate compliance in order to qualify for certification.

Equating—

A statistical process used to convert scores on two or more alternate forms of an assessment instrument to a common score for purposes of comparability and equivalence.

Essential Element—

A statement that is directly related to a Standard and specifies what a certification program must do to fulfill the requirement of the Standard.

Fairness—

The principle that all applicants and candidates will be treated in an equitable manner throughout the entire certification process. See Bias.

Grandfathering—

The process by which individuals are granted certification without being required to meet a formal examination requirement. This process is frequently invoked when a certification program is initiated, as a way of recognizing the experience and expertise of long-term experts, and/or to allow grandfathered individuals to develop the initial form(s) of the certification examination. Individuals initially certified through grandfathering may, in the future, be required to pass a form of the certification examination they did not participate in developing in order to maintain certification.

Governing Committee—

A group of individuals appointed or elected to formulate and implement policy related to certification program operation. The NCCA uses this term to denote those committees that are given complete authority over all essential certification decisions.

Incorporation Status—

Legal recognition granted by states to organizations; determines IRS classification as for-profit or nonprofit.

Item—

A general term referring to problems and/or questions that appear in assessment instruments and to which candidates must respond.

Item Bank—

The system by which test items are maintained, stored, and classified to facilitate item review, item development, and examination assembly.

Item Type or Format—

The structure of a problem or question in an assessment instrument (i.e., multiple choice, open-ended).

Job/Practice Analysis/Role Delineation Study—

Any of several methods used singly or in combination to identify the performance domains and associated tasks, knowledge, and/or skills relating to the purpose of the credential and providing the basis for validation.

Parent Organization—

The legal entity under which a certification program is established when the certification program is governed as part of a larger organization.

Performance Domains—

The set of organized categories characterizing a role or job under which tasks and associated knowledge and/or skills may be represented in the job/practice analysis.

Public Member—

A representative of the consumers of services provided by a defined certificant population, serving as a voting member on the governing body of a certification program, with all rights and privileges, including holding office and serving on committees. The public member should bring a perspective to the decision and policy making of the organization that is different from that of the certificants, and helps to balance the organization's role in protecting the public while advancing the interests of the profession.

(remove "consumer" from the glossary, as it has no definition)

Publish—

Make available in hardcopy, electronic, or web-based formats and easily accessible and available on request. The degree of accessibility may be a function of the level of confidentiality of the information.

Recertification—

Requirements and procedures established as part of a certification program that certificants must meet in order to ensure continuing competence and renew their certification. See Continuing Competence and Continuing Education.

Reliability—

The degree to which the scores on an assessment instrument are free of measurement error.

Role—

A more specific or narrower set of knowledge and skills than may be encompassed by the term *profession* or *occupation*, and may also be the focus of certification for a particular product or service to the public.

Self-Assessment—

A process by which an assessment instrument is self-administered for the specific purpose of providing performance feedback rather than a pass/fail decision.

Stakeholders—

The various groups with an interest in the quality, governance, and operation of a certification program, such as the public, certificants, candidates, employers, customers, clients, and third party payers.

Standard—

An accreditation requirement that must be met by a certification program submitting an application to the National Commission for Certifying Agencies.

Standardization—

IN THE CONTEXT OF ASSESSMENT INSTRUMENTS: ensuring that the process is conducted according to a specified plan in order to provide the same conditions for all candidates.

IN THE CONTEXT OF SCORING: ensuring that candidate responses are judged using predefined criteria in order to provide a consistent basis for evaluating all candidates.

Technical Report—

A summary of psychometric procedures and their results as implemented in the assessment instruments used in a certification program, often addressing such issues as content validity, item writing, test assembly, reliability analysis, cut score development, scoring, and equating.

Undue influence—

Control of decision-making over essential certification policy and procedures by stakeholders or other groups outside the autonomous governance structure of a certification program.

Validity—

The degree to which accumulated evidence supports specific interpretations of all components of a certification program (e.g., education, experience, and assessment instruments).

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Olive, M

Honorable Chairmen and Members of the Committee,

My name is Dr. Melissa Olive and I reside in Woodbridge, CT. I am a Board Certified Behavior Analyst at the Doctoral level. I am currently employed by the Center for Autism and Related Disorders (CARD, Inc), a world-wide agency that provides diagnostic services, early and intensive ABA to young children as well as short term intensive ABA for serious behavior problems such as behavioral feeding disorders, aggression, and self-injurious behavior. CARD is also an approved provider for continuing education for BCBAs and BCABAs and we offer numerous courses each year related to continuing education. Prior to working at CARD, I was an Assistant Professor at the University of Texas at Austin and the University of Nevada-Reno where I trained special education teachers to work with individuals with disabilities in a variety of capacities, including Early Childhood Intervention, Preschool Special Education, Special Education Life Skills Classes, Special Education Autism Units, and inclusive classrooms. I was also responsible for developing, implementing, and overseeing the UT-Austin program for training Board Certified Behavior Analysts.

In addition to all of my professional credentials, it is important to know that I have a 30-year-old brother with autism who moved in with me when he was only 13 years old. I have been responsible for overseeing his care since 1993.

I want to thank each of you for your work on this bill and for your commitment to the well-being of children with disabilities.

I am in support of Section 2 of this bill as it relates to the delivery of ABA services within schools. My brother would have benefitted from such a bill many years ago. As you may already know, a number of studies have shown that specific instructional techniques are effective for children. The most recent review (Eikeseth, 2009) noted that children who received ABA made significantly more gains than control group children in a variety of outcome measures. Similarly, in their review of autism treatment research, Rogers and Vismara (2008) concluded that early intensive ABA is the only "well-established" treatment. Reichow and Wolery (2009) recently completed a meta-analysis of early intensive behavior intervention for children with autism. They reported that on average, ABA is an effective treatment for children.

Additionally, research has shown that ABA is also effective for children with other disabilities. For example, Fisher and colleagues (2000) demonstrated that a behavior intervention plan based on ABA was effective for an individual with cerebral palsy (CP) and mental retardation (MR). Hasazi, & Hasazi (1972) used ABA techniques to successfully address math skills for a child with digit reversals. Rasmussen & O'Neill (2006) used ABA techniques to successfully address the problem behavior of 3 students diagnosed with emotional and behavioral disorders.

In summary, research has demonstrated that ABA can produce substantial gains in children. Thus, it is an appropriate instructional method for children to receive. As such,

those who teach children who need ABA should be appropriately trained to implement this scientifically proven instructional strategy.

As you may already know, many school district employees fail to receive training necessary to implement ABA. This is not a fault to the Universities and alternative training program that educate them but rather due to a system that limits the total hours an undergraduate may be required to complete while also requiring a certain number of hours in areas such as the Core Curriculum. This leaves few semester hours devoted to the use of ABA as a teaching method.

While I am in support of Section 2 of this bill, I must indicate my concern regarding Section 3 of this bill relating to burden of proof. Because of the expense incurred LEAs rarely initiate due process. Most often, it is the parents or guardians who file for due process. If the burden of proof is shifted to the party requesting the hearing then a substantial financial burden is placed on the family. Specifically, families are not experts on teaching methodology let alone on the requirements of IDEA. In order for a family to meet the burden of proof, the family would have to hire educational experts and attorneys to assist them. If a family could afford such extravagances, they would most often have pulled their child from public schools and paid for the education privately. As a family member who has been through a due process hearing for a loved one, it is an extremely stressful event. Requiring burden of proof on top of that would be detrimental to most families who lack the funds to follow through.

Again, I thank you for your commitment to individuals with disabilities. I appreciate your time. Please do not hesitate to contact me if you have questions regarding any of my testimony.

Prescott, M



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March 8, 2010

This testimony is submitted on behalf of the Connecticut Parent Advocacy Center (CPAC), a federally funded state-wide non-profit organization, whose sole purpose is to educate parents of children with disabilities about their rights under the Individuals with Disabilities Act (IDEA). The philosophy of our organization is to assist parents in working with their local school district so that their children receive appropriate educational services.

Based on our 28 years of experience working with families throughout the state, we strongly oppose Section 3 of Raised Bill 5425, which places the burden of proof on parents in special education due process hearings.

Parents Centers like CPAC exist in every state in the country. The parental rights under IDEA were included with the recognition that parents are at a distinct disadvantage in having the knowledge and skills to make joint decisions with schools about an appropriate education for their children with disabilities. We know that the majority of parents want to work collaboratively with their school district and that for a variety of reasons, including lack of access to information and fear of damage to their working relationship, only a small percentage of parents attempt to resolve differences through a due process hearing. Placing the burden of proof on parents exacerbates the barriers already facing families of children with disabilities.

Secondly, and perhaps more importantly, in this era of increased accountability in public education, the local school district should bear the burden of proving that every child's program is appropriate. We already know that in most school districts in Connecticut few children with disabilities are performing as well as their non-disabled peers, as measured by our CMT and CAPT scores. CPAC has been working with the State Department of Education to focus on improving academic outcomes for students with disabilities. While we believe improving outcomes is a shared responsibility of families and schools, the bottom line is that the school district is charged with the primary responsibility of implementing and evaluating the effectiveness of their programs. Again, placing the burden of proof on parents to prove that their child's program is inappropriate is contrary to the current efforts to improve public education for all students.

Nancy Prescott
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MEMORANDUM

To: Education Committee of the Connecticut General Assembly
From: Donald P. Fiftal, Superintendent of Schools
Date: March 5, 2010
Subject: Testimony in Support of House Bill #5425 (Burden of Proof).

I am Don Fiftal, Superintendent for the Darien Public Schools. I speak not only on behalf of the Darien Board of Education, but also as a representative of the Fairfield County Superintendents' Association, and as a representative of the Connecticut Association of Public School Superintendents.

As an individual Superintendent, and as a representative of the above named groups, I present this testimony in support of Raised House Bill #5425, which seeks to amend Section 3d, subdivision (1), subsection (d) of statute 10-76h of the general statutes.

Specifically House Bill #5425 seeks to clarify that for issues in dispute between school districts and parents, the burden of proof rests with the party requesting the hearing.

As Special Education is governed by both Federal and State Law, the Federal IDEA and Connecticut Statute 10-76 each provide both students and their parents with many procedural safeguards, educational benefits and a clear forum to remedy a dispute between the school and parent. These safeguards include due process provisions where disputes can be resolved via a series of steps, all the way to and including a hearing held before an impartial hearing officer.

To help clarify the issue of due process, in 2005, a Supreme Court decision (*Shaffer v Weast*, 2005) ruled that the party requesting the hearing bears the burden of proof in any dispute between a parent and school district. The Supreme Court was decisive in this ruling that, because IDEA is silent on the allocation of the burden of proof, the ordinary default rule applies whereby the party seeking relief for claims bears the burden of proof regarding the essential aspects of their claims. This element is fundamental in our judicial system.

Across the country, in state after state, the standard exists whereby the burden of proof defaults to the party requesting the hearing. However, this is not the case in Connecticut, where state department regulation does not require the party requesting the hearing to bear the burden of proof. Taken alone, the Supreme Court decision does not override the Connecticut regulation, and in 2006 the Commissioner of Education informed school districts that we would continue to bear the burden of proof unless and until school district concerns are addressed to the General Assembly.

Therefore, I present this testimony today to respectfully gain the support Of the Education Committee of the General Assembly for statutory relief to Connecticut's maverick burden of proof regulation that runs counter to the Supreme Court decision of 2005. Connecticut's administrative regulation has set up a system where parents and their attorneys can, in effect, claim: "School District, I charge you with my claim of educational malfeasance against my child. Now, prove yourself innocent." Though this statement is hyperbole, to drive home my point, it is symptomatic of the way special education hearings are structured and produces very real negative outcomes, particularly in costs to local communities.

For instance, school districts have been experiencing mounting costs for long hearings that can go on for 8 or 10 days or more. Or, to avoid the costly hearings under the backwards due process regulation, school districts have been forced into the position to settle unilateral outside placements by parents, because districts are cornered into paying those costs simply as a business decision, rather than face the legal fees to go to full hearing. Such fees for one single hearing, by the way, can easily equal the value of two full teacher's salaries. So rather than expend the \$100,000 it would cost to counter Connecticut's backwards burden of proof regulation, a District will choose to pay a settlement of say, \$25,000, for example. The settlement is paid, not because the district agrees its own program is inappropriate, but simply because the backward application of burden of proof in Connecticut costs so much. This circumstance has generated a mounting cottage industry of paid parent advocates who have developed adept strategies to attack teachers and school districts with accusations of inappropriate programs and instruction. Darien is a school district reputed for the excellence of all its educational programs for all students, including those with disabilities. Yet in Darien, as a direct result of the backward burden of proof regulation, we have had to establish a position for a legal compliance assistant to deal with on-going needs to assist our special education director and our legal counsel in coping with the litigiousness that has been spawned by how easy it is to make accusations against a school district in a system that then forces the district to prove its innocence, instead of requiring the accusing party to bear the burden of proof.

It is not a coincidence, then, that in the years since the Commissioner issued her circular letter on this topic, special education costs in public education have escalated exponentially. To a person, I encourage you to speak with school superintendents, and they will tell you that burgeoning legal costs and settlement costs in special education can be attributed to the fact that Connecticut has not brought its regulation on this matter in alignment with the Supreme Court's ruling of 2005. Connecticut's backward burden of proof regulation has had the effect of an unfunded mandate, whereby the costs of this irregularity are costing local communities increasingly large sums of money that get needlessly directed into due process and away from children, both those with disabilities and those without disabilities.

On behalf of the Darien Board of Education, the Superintendents of Fairfield County, and the Superintendents across the State of Connecticut, I urge the Education Committee members to remedy this situation by reporting this legislation favorably to the General Assembly to enact Raised House Bill #5425. This Raised House Bill will assure compliance with the Supreme Court finding of 2005, it will do what the Education Commissioner suggested had to be done back in 2006, and it will help make special education due process consistent with the judicial norm in America: that the burden of proof rests with the party initiating a legal action.

I thank you for your attention.