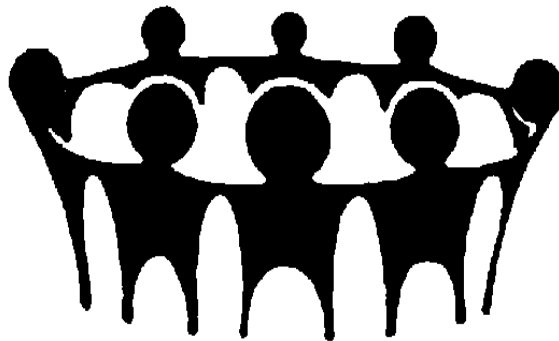


The Connecticut State Advisory Council on Special Education

2010 Annual Report





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VISION

The Connecticut State Advisory Council (SAC) on Special Education believes in optimizing the educational achievement of every child through a strong public educational system that proactively supports students, families and educators. To that end, the Council will use its strength as a broad based constituency group to play an active and influential role in decisions affecting policies, programs and services.

FUNCTIONS OF THE COUNCIL

The SAC on Special Education has been authorized by the Individuals with Disabilities Education Improvement Act (IDEA) since the Act's inception in 1975. The SAC is also authorized under Section 10-76i of the Connecticut General Statutes (C.G.S.) with the express purpose to "advise the General Assembly, the State Board of Education (SBE) and the Commissioner of Education" on special education matters. The SAC addresses all three goals of the Comprehensive Plan of the SBE and is specifically mandated by the IDEA and state statute to:

- a) advise the State Department of Education (SDE) of unmet needs in educating children with disabilities and on the administration of the provisions of C.G.S. Sections 10-94f to 10-94k, inclusive;
- b) review periodically the laws, regulations, standards, and guidelines pertaining to special education and recommend to the General Assembly, and SBE any changes which it finds necessary;
- c) comment publicly on any new or revised regulations, standards and guidelines proposed for issuance;
- d) advise the SDE in developing corrective action plans to address findings identified in federal monitoring reports under Part B of the act;
- e) advise the SDE in developing and implementing policies relating to the coordination of services for children with disabilities;
- f) participate with the SBE in the development of any state plan for provision of special education;
- g) comment publicly on any procedures necessary for distributing federal funds received pursuant to the IDEA, 20 U.S.C. 1400 et seq., as from time to time amended;
- h) assist the SDE in developing and reporting such data and evaluations as may be conducted pursuant to the provisions of said act;

- i) report to the General Assembly not later than January 15th in the odd-numbered years and not later than February 15th in the even-numbered years, concerning recommendations for effecting changes in the special education laws; and
- j) perform any other activity that is required by the IDEA, 20 U.S.C. 1400 et seq., as from time to time amended.

Determining what is an “Unmet Need”

According to 34 Code of Federal Regulations Section 300.169, the SAC’s duties include defining unmet needs within the state in the education of children with disabilities.

For the Connecticut SAC, this responsibility is carried out by answering a series of questions, collecting data and seeking additional information from a variety of sources. These sources include, but are not limited to parents of children with disabilities, individuals with disabilities, state and federal agencies, private business owners concerned about children with disabilities, and special education and nonprofit organizations that advocate for children with disabilities.

The following are the initially posed questions to determine if a “problem” warrants categorization as an “unmet need” by the SAC:

- First: Is the problem a systemic one throughout the State of Connecticut or does it relate to services for a specific disability population?
- Second: Is there existing available data to support/not support this allegation? If yes, what are the findings? If not, are there stakeholder groups that can be contacted for additional information on the issue?
- Third: Is more information needed requiring the formation of an Ad Hoc Committee to further research the subject?



2009-10 Session

It has been a year of transition for the SAC. A number of initiatives were undertaken including a complete reorganization of its Legislative Membership appointments and an expansion of its Policies and Procedures Manual. In addition to these significant organizational enhancements, the SAC continued to focus on its primary mandate of monitoring and commenting on proposed legislation related to special education. Additionally, we continued to discuss issues raised by both the general public and council members on the criteria of an “unmet need” in the special education realm.

The chair is pleased to report that the new membership legislation was passed by the Connecticut Legislature and the Council is now in its final reorganization mode. As new council members are appointed and new leadership is in place, the Council will focus its attention on researching and drafting 2010-11 recommendations on a number of unmet needs. Some of these priorities will be carried over from the 2009-10 priority list.

In addition, after recent review by the SDE’s legal counsel, SAC’s Policies and Procedures Manual is now in its final editing stages and should be presented to the Council for a final vote in the upcoming 2010-11 session.

Top Priorities:

The Council meets annually in July to evaluate the work done in the previous year and to establish new priorities for the upcoming year. During the July 2009 session, a consensus was reached on the need to streamline our processes and work more efficiently and effectively. We learned in 2008 that other states have begun to use their State Performance Plan (SPP) and the Annual Performance Report (APR) as mandated under IDEA as a starting point to identify and develop their priorities. We decided to adopt this approach by having council members select one of the 20 indicators and then serve as a stakeholder within the workgroups developed by the Bureau of Special Education (BSE).

During the 2009-10 year, council members updated the Council on their assigned indicator during a regular business meeting and/or submitted their report and findings to the Executive Council for review. If further research was required, an ad hoc committee was formed to address any of the Council’s questions and/or concerns.

If no further research was needed, a motion was made to adopt a specific recommendation and a vote taken. If the vote failed to adopt a recommendation the matter died or no action was taken until the Council either reached a consensus on the issue or requested further research/clarification.

The following were the top four priorities for 2009-10 as adopted at the 2009 July Retreat:

1. **Statewide Assessments: Questions and concerns raised about participation and performance on statewide assessments**
2. **Scientific Research-Based Interventions (SRBI): Questions and concerns raised**
3. **SPP Indicators 16, 17, 18 Complaint Resolution/Due Process: Review how complaints are filed, review the Procedural Safeguards document to identify what does and does not work.**
4. **Restraint and Seclusion**

Other Priorities:

Legislation: During the past year, the Council submitted a bill revising its membership statutes to be in alignment with IDEA. Connecticut has the largest membership (37) of any state's SAC in the country; the IDEA requires 25 representatives. In addition, the Council spent a considerable amount of time reviewing raised bills/revisions of state regulations related to special education as well as following public hearing dates and drafting public testimony. The Council submitted the following to the General Assembly:

- Proposed Bill to Department of Education on updating SAC's membership. House Bill No. 664.
- Raised Bill No. 5425 An Act Concerning Special Education – submitted written testimony.
 - Supported Section 1: Membership of the SAC on Special Education.
 - Opposed Section 3 Subdivision (1)(d): changing burden of proof.

Race to the Top Federal Grant: Wrote a letter of support to the Commissioner of Education and the Secretary to the State Board of Education supporting the State of Connecticut's dedication to educational reform.

State Performance Plan Indicators 1–20: Throughout the session, Council members presented reports on various indicators updating the Council on any unmet needs.



SAC's RECOMMENDATIONS:

Based upon its responsibility to advise, the Council requests your action on the following recommendations:

1. Statewide Assessments - Questions and concerns raised about participation and performance on statewide assessments.

Recommendation: As soon as a special education student's scores are known and a need for improvement is identified, a planning and placement team (PPT) meeting should be called immediately (by either the district or parent/guardian) to discuss the test results, and if necessary, make modifications to the individualized education program (IEP).

According to the February 2010 SPP – Indicator 3 Baseline Data for FY 2004 (2004-2005), section 3B states that the average participation rate (Connecticut Academic Performance Test [CAPT] and Connecticut Mastery Test [CMT]) for students with disabilities is 97.1%. However, in Section 3C, the average proficiency for this population is 35%. Therefore, 65% of special education students *are not* proficient in one or more of the key content areas.

The Council's research indicates that the low proficiency rate may be related to the comparative timing of these tests and the annual IEP review of the majority of students. Historically, the state assessment tests are given in the spring of the school year and most special education students also have their annual IEP review in the spring.

However, test results are not published until the fall and many planning and placement teams are not reconvening at that time to discuss low test results and adjust/modify IEP's as necessary.

The Council recommends that districts not wait up to six months to address test scores at PPT meetings but rather schedule meetings for students with low test scores at the time results are published. In addition, all parents should be reminded of their right to request a PPT at any time they feel it is necessary, especially if their child has low test scores.

2. Scientific Research-Based Intervention - Questions and concerns raised.

Recommendation: That all SDE bureaus (including nonprofits working with SDE – i.e., SERC, etc.) consistently articulate the tenets of SRBI to the field and clearly communicate how SRBI is to interface with special education, specifically relating to students requiring referral to special education.

Council members heard from various stakeholders responsible for implementing SRBI in their district as well as from persons responsible for training district staff in SRBI. It is the Council's conclusion that there is a considerable degree of misunderstanding among administrators, teachers and parents about what SRBI is intended to achieve.

Several council members have attended a number of SRBI workshops in Connecticut sponsored by both nonprofit and for profit organizations. They expressed concerns with the misleading information

disseminated during these workshops about when a student should be referred to special education. A review of information analyzed indicated there are more questions than answers:

- There are not clear guidelines to SRBI - i.e., what are the mechanics?
 - Which educators are responsible for implementing SRBI at the district?
 - What are the roles of the interventionists?
- When are parents to be notified that their child is in SRBI?
 - Is there a timeline for how long that student will be in SRBI before a referral is made for special education?
- Will the parents be provided with their child's SRBI data to document the progress and/or lack of progress achieved during the semester?

We also heard from Council members that some districts in the state are denying services to special education students in the name of SRBI. One cited example was a student who was exited from special education because all the tiers of interventions in SRBI had not been completed prior to the student being referred to special education.

Statewide communication is needed to educate parents of their right to request a referral for special education at anytime, regardless of whether their child has completed all the tiers of interventions in SRBI.

The Council has decided to keep this issue as one of its priorities in 2010-11 due to the overwhelming amount of current confusion about SRBI's interface with special education.

3. State Performance Plan Indicators 16, 17, 18 – Complaint Resolution/Due Process: Review how complaints are filed. Review the Procedural Safeguards document to identify what does and does not work.

Recommendation: The Council supports the SDE's updating of the Procedural Safeguards in Special Education document. However, we advocate that this document be written in plain language as the current content is too legalistic for the average parent to fully understand.

The Council dedicated several meetings to this topic in order to understand the entire complaint resolution, mediation and due process systems. The Council heard from Gail Mangs and Theresa DeFrancis from the BSE, from Attorney Jennifer Laviano who represents parents of children with disabilities and from council members (district personnel and parents) who have personally been involved in one or more complaint resolution/due process sessions.

A sampling of their comments includes:

- Connecticut's complaint/due process system is complicated – handbooks and other documents are not written in plain and easy to understand language.
- Districts are not providing enough parent training; therefore, many parents do not know about the due process handbook or their legal rights.

- Hearing officers do not necessarily have a special education background before being hired which, in some cases, is reflected in their rulings. Hearing officers cannot require parties to report outcomes of settlements back to them. Attorney Laviano suggested that enabling officers to require parties to return for a follow-up session would be a giant step forward. This would provide officers with real time feedback and may change how they handle and settle cases. In addition, it would guarantee accountability for all parties involved.
- Some teachers have reported feeling intimidated by districts and concerned about retribution, which made them hesitant to testify truthfully under oath. Hearing officers are not currently required to inform teachers that they are protected under Section 504 of the Rehabilitation Act of 1973, as amended by 29 U.S.C. Section 794 et seq. Further research is needed in the upcoming 2010-11 session to determine if the Council should recommend a special education whistleblower bill that will protect teachers, paraprofessionals and additional support staff while testifying at a due process hearing.
- Individualized Education Programs (IEP) can be complicated and difficult to understand.
- Fairfield County has the highest number of due process filings in the state. Most of the cases cite violations of free and appropriate public education (FAPE), which results in settlements requiring out of district placement into private schools.
- Parents have a difficult time confirming if their child is receiving the agreed upon amount of related services stated in the IEP or settlement agreements.

The Council realizes that it cannot change the existing system for complaint resolution/due process. However, we believe that more can be done to streamline the process and it was therefore decided to maintain this issue as a 2010-11 priority.

3. Restraint and Seclusion:

Recommendation: None at this time.

This issue was voted and agreed upon as a priority at the July 2009 summer retreat. However, due to the legislative member reorganization, the members of this sub-committee resigned before any recommendations could be made. After a great deal of discussion at the final business meeting, members expressed significant continuing concern on this issue and believe that a new sub-committee should be created so this issue can remain a priority in the 2010-11 session.

Testimony of concerns:

- Proper staff training: Council members testified that there are no state standards on restraint and seclusion training. Each district carries out its own in house training and/or refers all restraining emergencies to local resource officers stationed in their schools. It was also reported that some school personnel are not trained in de-escalation strategies and therefore physical restraint is the only option.
- What, if any, trends are evident within the restraint and seclusion data collected by SDE? How many students restrained and secluded are special education students? In addition what are the demographics of that special education population who are restrained or secluded?



2010-11 Priorities

On June 16, 2010, the Council voted in its new officers for the 2010-11 session: Dr. John Burke as Chair and Beth Hart as Vice Chair. The Council Secretary, appointed by the Commissioner of Education, is Dana Corriveau and Brenda Sullivan will serve on the Executive Committee as former Chair. However, the appointments of all current Council members terminated as of June 30, 2010, and new membership legislation took effect on July 1, 2010. This process is still continuing and should be completed in November.

Under the Freedom of Information Act, the Council cannot hold legal meetings until the appointment process is completed. This prevented the scheduling of a retreat to draft the new business calendar and finalize priorities for the upcoming session.

However, at the last business meeting in June, the Council did discuss continuing the following priorities for the upcoming 2010-11 session. These priorities will be presented to the new SAC at the next scheduled business meeting for consideration:

- 1. Statewide Assessment**
- 2. Restraint and Seclusion**
- 3. Scientific Research-Based Intervention - questions and concerns raised**
- 4. State Performance Plan Indicators 16, 17, 18 – Complaint Resolution/Due Process – Review how complaints are filed, review the Procedural Safeguards document to identify what does and does not work.**

Respectfully Submitted,

Brenda J. Sullivan
Chair



Appendix: A

2009 – 10 Connecticut State Advisory Membership and Attendance Rosters

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**CT State Advisory Council on Special Education
Attendance Roster 2009-10**

| | Number of Members |
|---|--------------------------|
| Appointed Members | 27 |
| Members who attended meetings more than 2 times out of 10 meetings | 22 |
| Members with unexcused absences more than 2 times out of 10 meetings | 6 |
| Members who had an excused absence related to work or family at any time during the 10 meeting session | 16 |
| Number of members that never showed up to any meetings | 3 |
| Number of members who resigned for various reasons before June 30, 2010 legislative deadline | 4 |



Appendix: B – Correspondence



State Advisory Council On Special Education

STATE DEPARTMENT OF EDUCATION • 25 INDUSTRIAL PARK ROAD • MIDDLETOWN, CT 06457

May 21, 2010

Dr. Mark K. McQuillan
Commissioner and Secretary to State Board of Education
Connecticut State Department of Education
165 Capitol Avenue
Hartford, CT 06106

Dear Dr. McQuillan,

The Connecticut State Advisory Council on Special Education (SAC) is pleased to support the State of Connecticut's Phase II application for Federal *Race to the Top* funding. The application demonstrates the State's progress and commitment toward educational reform, and provides a strategic vision and roadmap for Connecticut's public schools that embraces early childhood education through secondary education and into the work force.

The Connecticut State Advisory Council (SAC) on Special Education has been authorized by the Individuals with Disabilities Education Act (IDEA) since the Act's inception in 1975. The SAC is also authorized under Chapter 164 Section 10-76i of the Connecticut General Statutes with the express purpose to "advise the General Assembly, the State Board of Education and the Commissioner of Education" on special education matters. The SAC addresses all three goals of the Comprehensive Plan of the State Board of Education and is specifically mandated by IDEA and state statute to:

- j) advise the State Department of Education of unmet needs in educating children with disabilities and on the administration of the provisions of sections 10-94f to 10-94k, inclusive;
- k) review periodically the laws, regulations, standards, and guidelines pertaining to special education and recommend to the General Assembly, and the State Board of Education any changes which it finds necessary;
- l) comment publicly on any new or revised regulations, standards and guidelines proposed for issuance;
- m) advise the State Department of Education in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act;
- n) advise the State Department of Education in developing and implementing policies relating to the coordination of services for children with disabilities;
- o) participate with the State Board of Education in the development of any state plan for provision of special education;

- p) comment publicly on any procedures necessary for distributing federal funds received pursuant to the IDEA, 20 U.S.C. 1400 et seq., as from time to time amended;
- q) assist the State Department of Education in developing and reporting such data and evaluations as may be conducted pursuant to the provisions of said act;
- r) report to the General Assembly not later than January fifteenth in the odd-numbered years and not later than February fifteenth in the even-numbered years, concerning recommendations for effecting changes in the special education laws;
- s) perform any other activity that is required by the IDEA, 20 USC 1400 et seq., as from time to time amended.

The Council believes in optimizing the educational achievement of every child through a strong public educational system that proactively supports students, families and educators. To that end, the Council will use its strength as a broad based constituency group to play an active and influential role in decisions affecting policies, programs and services.

In SAC's 2009 Annual Report Council members followed 20 Indicators from the State Performance Plan (SPP) and the Annual Performance Report (APR) as mandated under IDEA as a starting point to develop the Council's priorities for that session. We believe our recommendations directly tie into all the goals of the *CT Race to the Top Phase II Reform Plan*.

Based upon SAC's responsibility to advise the State Department of Education, State Department Board of Education in 2009 we recommended the following:

1. SPP Indicator 4: Suspension and Expulsion: Examine the requirement for CSDE to fully enforce Sec. 10-233a(b) of the Connecticut General Statutes to require local education agencies (LEAs) to collect and report data on students who were removed from their regular classroom for 90 minutes or more, including stronger enforcement for reporting students who are referred to the office or other areas of the school (e.g. nurses office, hallways, library, etc), or sent home before the end of the school day.

In addition, require the CSDE to alter the bullying data collection victim information to reflect whether the victim is a student with a disability or not, regardless of whether or not here is an active IEP.
2. SPP Indicator 8: Parent Involvement and the Special Education Parent Survey: Examine the requirement for the CSDE to provide timely targeted assistance to parents in those districts with poor parent survey results, including the use of outside organizations that support parental involvement, instead of delaying action according to a six-year sampling plan. Districts with poor satisfaction data are to be placed on a more frequent surveying cycle.
3. SPP Indicator 13: Transition Planning/Services: In the fall of 2009, publish a Topic Brief or an article in the Bureau Bulletin on transition planning for medically fragile students living in institutions. The newly published pages in the IEP (Individual Education Plan) do not accommodate this particular population. This Topic Brief or article would therefore instruct LEAs on how to modify the existing transition planning pages.

In addition, at the next scheduled IEP revision, revise the transition planning pages to accommodate medically fragile students living in institutions or hospitalized.

4. State Advisory Council on Special Education Membership Appointments: Support newly proposed legislation aligning SAC membership appointments to the IDEA State Advisory Panel as written in section 300.168.

The purpose of this legislation would be to reduce the membership from 37 to 25; divide those appointments between the Governor and the Connecticut Commissioner of Education for the purpose of achieving a more racially and disability represented membership.

In summary, the Connecticut State Advisory Council on Special Education is committed to continuing its work with the SDOE in advising and recommending unmet needs as they relate to policies, programs, regulations and legislation for Connecticut's diverse learners, specifically students with disabilities. We respectfully request that you support these efforts.

Sincerely,

A handwritten signature in black ink, appearing to read "Brenda J. Sullivan". The signature is fluid and cursive, with a large initial "B" and "S".

Brenda J. Sullivan, Chair
Connecticut State Advisory Council on Special Education



State Advisory Council On Special Education

STATE DEPARTMENT OF EDUCATION • 25 INDUSTRIAL PARK ROAD • MIDDLETOWN, CT 06457

March 12, 2010

Raised Bill No. 5425 An Act Concerning Special Education

A Comment from Brenda J. Sullivan, Chair Connecticut State Advisory Council on Special Education

Senator Gaffey, Representative Fleischmann, and Members of the Joint Education Committee. My name is Brenda Sullivan, Chair of the State Advisory Council on Special Education, also known as SAC. I am also a parent of a child with severe multiple disabilities of which cerebral palsy, blindness and severe seizure disorder are the most severe. I write to express the views of the SAC on **Raised Bill 5425, An Act Concerning Special Education.**

Since 1975, the State Advisory Council on Special Education has been authorized under the Individuals with Disabilities Education Act (IDEA) to investigate and report unmet needs for Connecticut's special education population to the State Board of Education and the Connecticut General Assembly. Under Chapter 164 Section 10-76i of the Connecticut General Statutes, the SAC is further authorized to "advise the General Assembly, the State Board of Education and the Commissioner of Education" on special education matters.

On March 19, 2007 our previous Chair, Dr. Jim Granfield, came before this Committee and testified on issues raised in **Bill 7176, "An Act Concerning Special Education."** Then on March 23, 2009 I appeared before you to reiterate the SAC's position on **Raised Bill 1142, "An Act Concerning Relief of State Mandates on School Districts."**

Today I am writing you once again on behalf of the SAC to respectfully request that you:

- **Support** Section 1: Membership of the State Advisory Council for Special Education
- **Oppose** Section 3 Subdivision (1) (d) changing the burden of proof.

Section 1: Membership of the State Advisory Council on Special Education:

In 1997, the Federal Law, IDEA established State Special Education Advisory Panels or (SEAP's) for the purpose of providing policy guidance on special education and related services for children with disabilities. These "Special Education Panels" are now in every state and U.S. territory.

According to IDEA, SEAP membership will be appointed by either the Governor or by any other “official” authorized under state law. In addition, membership appointments should be representative of the state’s population in terms of ethnic/racial diversity and the types of disabilities found within the state as well as include individuals who are involved with and/or concerned about children with disabilities.

Panel membership therefore includes parents of children with disabilities, individuals with disabilities as well as professionals working with children with disabilities as outlined in IDEA section 300.168. During the creation of IDEA, the Connecticut General Assembly had already passed legislation establishing a “Special Education Advisory Council” and it was therefore pragmatic to “officially” designate this group as the Connecticut Special Education Advisory Panel (although the term “Council” was retained in lieu of the term “Panel,” per IDEA terminology).

In July 2006, the Connecticut General Assembly increased the authorized number of Special Education Advisory Council membership appointments (Chapter 164 section 10-76i) from the 25 required under IDEA to 38. The additional 13 appointments were intended to be filled by members of the General Assembly.

However, since the passage of this legislation, only a few legislators have made appointments to the Council and/or have personally participated in Council business. Prior Chairs and Membership Committees have attempted, with very limited success, to notify appointing authorities of various candidates that have expressed an interest in joining the SAC. As a result, during the past several years the Council has primarily carried out its functions with less than 50% of its intended and authorized membership level.

Due to the overwhelming number of appointing authorities, it has become very difficult for the Council to balance its membership among ethnic groups and to maintain an even representation among disability types. Currently the dominant ethnic group is Caucasian and autism is the most commonly represented disability. Half of our official appointments remain vacant.

For the last several years, the Council and the Bureau of Special Education have been working hard to address this situation. We reviewed Chapter 164 of the current Connecticut Statutes, sections 10-76i, the Council’s legislative history, the IDEA section 300.168 as well as the membership guidelines of other state SEAPs to learn the details of the laws and how other states compare.

This analysis revealed that Connecticut is the only state with 38 appointments (most of which are by the Connecticut General Assembly) and that appointments in all other researched states are equally made by the Governor and the Commissioner (Superintendent) of Education. We collectively believe that the only practical remedy to the current situation consists of revising SAC’s membership level via the passage of new legislation.

The Connecticut State Advisory Council requests your support in updating our membership state statutes so we can achieve the desired ethnic diversity and balanced representation of disabilities that is required by the Federal Law.

Section 3 Subdivision (1) (d) changing the burden of proof

The SAC strongly **OPPOSES THE REPEAL** of Section 3, Subdivision (1) of subsection (d) which states *“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.”*

The Council believes that this change will have the following negative ramifications:

1. It will create a financial hardship to families, a considerable number of whom are already burdened with high medical and support therapy costs;
2. It will create an even greater unfair advantage for school districts and a correspondingly greater unfair disadvantage for parents. School Districts already have multiple advantages over parents, especially during a Planning and Placement Meeting (PPT). The reality is that many, if not most; parents are currently unable to adequately defend their child’s IEP due to having little to no training on properly interpreting evaluations as well as fully understanding IEP content and special education procedural safeguards. This is confirmed by the “2007/2008 Connecticut Special Education Survey Summary Report”, in which parents reported (63.5%) they have not attended and/or received parent training sessions in the past year.
3. It will make it virtually impossible for parents to ever prevail against a District in a Due Process Hearing. The expertise of the Districts coupled with their control of student records already results in the majority of Due Process Hearings ruling in favor of the Districts. The Council is greatly concerned that the proposed Bill will “stack the deck” even further in ensuring favorable outcomes for the Districts, which, in turn, will also impede the Districts’ mandate to provide FAPE (Free and Appropriate Public Education).

Our position against changing the “burden of proof to party requesting a hearing” is shared by an overwhelming number of national organizations that advocate for persons with disabilities. I quote from two such sources:

In a brief (dated April 29, 2005), authored by ARC of the United States, Autism Society of America, Epilepsy Foundation, NAMI, United Cerebral Palsy, and the National Law Center on Homelessness & Poverty and submitted to the United States Court of Appeals for the Fourth Circuit, Schaffer vs. Weast in support of the Petitioners they argued the following:

- a) “Studies over the past 30 years have documented that school districts hold significant advantages over parents in the process for developing the IEP and at any ensuing due process hearings. These advantages demonstrate the need for the burden of proof to be on school districts to show at any due process hearing, that the IEP developed is appropriate”...
- b) School districts generally will have information not available to parents that is relevant in developing an IEP and at any subsequent due process hearings. “In practical terms, the school has an advantage when a dispute arises under the Act: the school has better access to the relevant information, greater control over the potentially more persuasive witness (those who have been directly involved with the child’s education) and greater overall educational expertise than parents” ...

- c) The burden of proof dictates the structure of the proceeding, determining who must present their evidence first. See *O’Neal v. McAninch*, 513 U.S. 432, 436 (1995) (courts determine who has the burden to help control the presentation of evidence at trial”) Unrepresented and inexperienced parents are at a disadvantage if they have to present their “case” first, not understanding what is expected of them and lacking the opportunity to model their presentation on that of the school district’s experienced representative....
- d) Most parents who request an impartial due process hearing will be unrepresented by counsel and will not have participated in such a hearing before. See 150 Cong. Rec. S5351 (daily ed. May 12, 2004) (Sen. Kennedy) (“Most parents don’t have access to any attorney, or must rely on low-cost legal aid. And data from surveys shows that even this help is in short supply.”) By contrast, the school district is normally represented by an attorney, a repeat player familiar with the formal and informal rules surrounding such proceedings. See *ibid* (“Those parents who have the courage to go it alone face schools that are well represented. State data shows that in 2003 schools were much more likely to bring an attorney to a hearing than parents were.”)

The National Council on Disability Position Statement to the Supreme Court of the United States “Individuals with Disabilities Education Act Burden of Proof: On Parents or Schools? Schaffer v. Weast” (Dated August 9, 2005). Drafted by Peter W.D. Wright who is the founder of WrightsLaw concludes the following:

“When Congress reauthorized IDEA in 2004, they wrote:

[T]he implementation of this title has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.

It is undisputed that millions of children with disabilities were denied an education and excluded from school. Today, in 2005, there are significant problems with children not being taught basic reading, writing, arithmetic, and spelling skills so they can be economically self-sufficient and employable. The remedial nature of special education law, the procedural safeguards from *Mills*, decades of failure by schools to educate children with disabilities require that the school district bear the burden of proving that their proposed education program, denial of special education eligibility, or other action is proper, under the Act.

School districts should have the burden of proof in issues about IEP’s, placement, eligibility, and other matters related to an appropriate education.”

In addition, there are at least 12 states that have burden of proof legislation on the districts and there are more states currently changing their statutes from the “party who files for the hearing” back to the districts because it was such a hardship on parents.

- | | |
|----------------------|------------------------------|
| Alabama | Illinois |
| Alaska | Kentucky |
| Connecticut | Minnesota |
| District of Columbia | West Virginia |
| Delaware | New York (changed in 2007) |
| Georgia | New Jersey (changed in 2007) |

The Connecticut State Advisory Council on Special Education continues to fully support former Dr. Betty Sternberg's statement in her Circular Letter C-9 dated February 22, 2006, to Superintendents of Schools, directors of Special Education and Local Boards of Education.

“I am not seeking to revise the state regulation to conform to the ruling in the Schaffer case. As the IDEA leaves to the states the management of the hearing system and the law itself is silent on the burden of proof, the standard in Connecticut articulates a valid state policy that school districts are in a better position to defend the appropriateness of an IEP. Districts 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 determining whether an IEP is appropriate.”

There is overwhelming evidence that other states do agree that placing the burden of proof on the “party who files for the hearing” unfair and have either codified legislation putting the burden on the districts or reversing their position entirely. Several states that reversed their position (such as New Jersey) because there was overwhelming evidence that districts were “taunting” parents to file for a hearing, knowing that many families could not afford the legal fees. This resulted in parents accepting substandard Individualized Educational Programs (IEP) for their children with disabilities.

Ladies and gentlemen, families with children with disabilities already deal on a daily basis with hardship and stress in all facets of their lives, including the education of their children. On behalf of the State Advisory Council, I urge you to not add to these families' difficulties by passing Section 3 of this Bill as currently drafted and let the burden of proof remain where it rightfully belongs – with the Districts.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Brenda J. Sullivan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brenda J. Sullivan, Chair
Connecticut State Advisory Council on Special Education

Appendix: C

Connecticut State Advisory Council on Special Education By-Laws (Adopted March 2009)

Article I Name

Section 1: The name of this organization shall be: State Advisory Council on Special Education herein referred to as the *Council* under the authority of Sec. 10-76i of the Connecticut General Statutes.

Article II Purpose

Section 1: The purpose of the Council is to:

- a) Advise the State Department of Education of unmet needs in educating children with disabilities and on the administration of the provisions of sections 10-94f to 10-94k, inclusive;
- b) Review periodically the laws, regulations, standards, and guidelines pertaining to special education and recommend to the General Assembly, and the State Board of Education any changes which it finds necessary;
- c) Comment publicly on any new or revised regulations, standards and guidelines proposed for issuance;
- d) Advise the State Department of Education in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act;
- e) Advise the State Department of Education in developing and implementing policies relating to the coordination of services for children with disabilities;
- f) Participate with the State Board of Education in the development of any state plan for provision of special education;
- g) Comment publicly on any procedures necessary for distributing federal funds received pursuant to the Education of the Handicapped Act, 89 Stat. 774 (1975), 20 U.S.C. 1400 et seq., as from time to time amended;
- h) Assist the State Department of Education in developing and reporting such data and evaluations as may be conducted pursuant to the provisions of said act;
- i) Report to the General Assembly not later than January fifteenth in the odd-numbered years and not later than February fifteenth in the even-numbered years, concerning recommendation for effecting changes in the special education laws.

Article III Membership

Section 1: The Council shall be composed of 37 members pursuant to section 10-76i of Connecticut General Statutes as amended and effective July 1, 2006.

Section 2: The members shall serve two year terms in accordance with the Connecticut General Statutes.

Section 3: In the event an appointing authority fails to appoint a member to the Council, the Council may utilize a “member at large” to assist the Council in carrying out its statutory and regulatory duties, provided any person selected as a member at large shall have the appropriate qualifications to so assist the Council. A member at large may be appointed at the discretion of the Chair of the Council and with the consent of the currently serving Council members. A member at large shall not have voting rights, or hold leadership positions, such as a Chair of a committee or represent the Council outside of Council meetings. A member at large may serve on Ad Hoc Committees and actively participate in the work of the Council as directed by the Chair. Member at large status shall terminate when the expertise of the member at large is no longer needed or the work of the member at large has been completed.

Article IV Officers

Section 1: The officers shall be the Chair, a Vice-Chair and one or both of the officers shall be a parent of a child with a disability and/or an individual with a disability. The officers shall be nominated in May and elected at the June meeting. Officers elected by a majority of the Council shall serve a one year term in accordance with the Connecticut General Statutes.

Section 2: The Chair shall preside at all meetings of the Council and shall perform the duties usually attached to the office. The Chair shall be the Chair of the Executive Committee and a member, with vote, of all other committees except the Nominating Committee.

Section 3: The Vice-Chair’s duties shall include the following:

- In the absence of the Chair the Vice-Chair shall preside at the meetings of the Council and, when necessary, perform the duties of the Chair.
- Coordinate, schedule and advertise monthly meetings
- Act as parliamentarian during panel meetings

Section 4: The designee of the Commissioner of Education shall meet with and act as Secretary to the Advisory Council pursuant to section 10-76i and will serve on the Executive Committee.

Section 5: The Secretary shall perform duties as may be assigned by the Chair and may be assisted by personnel of the State Department of Education when necessary. They shall maintain a copy of minutes and agendas for a cumulative record of the Council's work.

Article V
Committees

Section 1: There shall be the following standing committees:

1. Executive Committee
2. Legislative Committee
3. Nominating Committee
4. Membership Committee

And such other committees as the Chair shall establish with the consent of the Council. The responsibilities and duties of all committees shall be defined by the Chair with the consent of the Council.

Section 2: Except for the officer serving on the Executive Committee, the Chair shall, with consent of the Council, appoint the Committee Chair and members for all committees.

Section 3: The Executive Committee shall consist of the Chair, Vice-Chair, Secretary, immediate past Chair, and two additional members appointed by the Chair at their discretion. The Committee shall review the business at hand and develop at the agenda for the following Council meeting. The committee shall act for the Council in all matters requiring decisions between full Council meetings.

Section 4: The Legislative Committee shall consist of a minimum of three members. The committee will follow and review legislation relating to special education, recommend legislation to the Council, identify legislative priorities, and initiate and promote such legislation as the Council directs.

Section 5: The Nominating Committee shall consist of a minimum of three members. Members of the Executive Committee shall not serve on the Nominating Committee. The Committee will prepare a slate of officers for the Council prior to the May meeting and the Council will vote on such slate of officers at the June meeting. The Nominating Committee will maintain a record of member activity on behalf of the Council including the length of service as Officers of the Council for members serving as Officers of the Council, stakeholder groups or work groups members participate in on behalf of the Council or organizations member have been appointed by the Chair.

Section 6: The Membership Committee shall consist of a minimum of 3 members and will monitor attendance as per section 10- 76i of Connecticut General Statutes; and advise the Council. The Chair of the Council in conjunction with the Chair of the Membership Committee will advise the appropriate appointing authority as needed.

Section 7: The Membership Chair in conjunction with the Chair of the Council shall solicit from appropriate educational organizations, parent organizations and other appropriate sources to fill open vacancies prior to the end of the calendar year (December). Council Member terms will begin on July 1 and end on June 30. Every effort will be made to solicit potential members that represent the broadest range of individuals with disabilities and ethnic backgrounds.

Article VI **Ad Hoc Committee**

Section 1: The Chair, with the consent of the Council, may establish such Ad Hoc committees as deemed necessary. The responsibilities and duties of such Ad Hoc committees shall be defined by the Council.

Section 2: An Ad Hoc Committee may be established to work on any individual task or project that can be best addressed by utilizing special knowledge and expertise of other state or private agencies or individuals. The Ad Hoc committee shall be Chaired by a member of the Council appointed by the Chair with the consent of the Council.

Section 3: Members of an Ad Hoc Committee shall be appointed by the Ad Hoc Committee Chair with the consent of the Chair of the Council. Ad Hoc Committee members may be members of the Council and individuals with expertise. There shall be a minimum of three members, including a Chair, on any Ad Hoc Committee with actual numbers determined by the requirements of the task undertaken.

Section 4: An Ad Hoc Committee shall continue in operation until the task undertaken has been completed unless it is disbanded sooner by: a) a vote of the ad hoc committee members, or b) by a vote of the Council. When an Ad Hoc Committee completes its work, issues its reports and makes its recommendations, if any, to the Council it is automatically disbanded, unless continued by a vote of the Council.

Article VII **Meetings**

Section 1: The Council shall meet at least once during each calendar quarter and at such other times as the Chair deems necessary or upon request of a majority of the members in the office.

Section 2: A majority of the members in office, but not less than ten members, shall constitute a quorum of the Council.

Section 3: Any member who fails to attend three consecutive meetings during any

calendar year shall be referred to the executive committee for review. Any member who fails to attend fifty percent of all meetings held during any calendar year shall be deemed to have resigned.

Section 4: The latest revision of Robert's Rules of Order shall govern the meetings of the Council.

Section 5: All Council meetings shall be open to the public and notification of such meetings will be in accordance to the 1998 Freedom of Information Act Section 1-21.

Article VIII **Amendments**

Section 1: These By-Laws may be amended by a two-thirds vote of members in office and by proxy at any regular or special meeting of the Council providing that such amendment has been submitted in writing to all Council members not less than twenty-one days prior to the meeting.