

Conn SPED Coalition



January 8, 2015

Rep. Brian Becker, Co-Chair
Rep. Michelle Cook, Co-Chair
Rep. Terrie Wood, Co-Chair
M.O.R.E. Commission
Special Education Work Group

Re: 'Testimony' of the
Connecticut SPED Coalition

The Honorable Co-Chairs and Members of the MORE Commission

Special Education Work Group:

Thank you for providing us with this opportunity to comment on matters pertaining to Special Education in Connecticut particularly continued efforts to effectively shift the burden of proof in Due Process hearings onto families.

We are an alliance of SPED, SEPTA, SEPTO and similarly dedicated organizations in Connecticut. Generally, these organizations are formed by parents and families for parents and families in order to help them cope with, learn about and successfully navigate the complicated Special Education process in our State. They are also designed to provide mutual support and information to the parents and families so that they may better seek and receive the services and support that their children need and deserve.

Until this point the local organizations in each town or city stood alone. Their voices were presented solo. This coalition was formed for the purpose of uniting these organizations in order to present a unified voice or chorus on topics that are extremely important to all of our organizations.

You should know that the agenda of this Work Group of the MORE Commission and the presentations made to it were the catalyst for the formation of this alliance. In particular, the repeated attempt by Special Ed administrators, their special interest groups and legal teams to

throw the burden of proof onto the shoulders of parents and families in due process hearings has stirred us into action.

We have paid particular attention to the presentations and submissions that have advocated for altering the method by which the burden of proof is assigned within Due Process hearings. **We are here to tell you that such a proposal is not only uncalled for and unnecessary, it is unfair. It would place an additional burden on the already over-strained shoulders of the families that can ill-afford to be confronted by one more obstacle to receiving needed and deserved services for their children.**

A number of arguments have been put forward in an attempt to rationalize this change. None of them is accurate or persuasive. We will explain why they fail below.

1. Argument: Connecticut stands in the minority of States by placing the burden of proof in due process proceedings on the school districts.

The short response is: 'So what?' Rather than running from this position, we should embrace it as an example of how Connecticut recognizes the difficulties faced by our families. Connecticut should be proud of the fact that it has taken such a progressive, forward leaning and fair position.

2. Argument: An attempt is made to articulate a 'fundamental fairness' argument (that the party challenging the program should have the burden of proving its ineffectiveness).

This argument turns the reality of the whole special ed process on its head. As the 'gatekeeper' of all the information and personnel that are needed to design, implement and monitor an appropriate individualized educational plan for the student. As such, Districts are the natural party to demonstrate the effectiveness of the program they designed and are implementing. The families are just not on the same footing as the Districts when it comes to the ability to access information, observe progress and pressure personnel.

3. Argument: The due process system as it exists creates an antagonistic atmosphere.

It should be noted that the assignment of the 'burden of proof' is a matter that is not addressed, if at all, until the conclusion of the hearings and at a time when a decision is to be made. The advocates of this change are really arguing that it is the due process procedure as a whole that causes this adversarial relationship. Obviously, procedural matters that might arise (if at all) later in the process do not create anxiety at the outset.

In addition, the last thing that parents want to do is to go to due process. Before getting to that point they have most often been through numerous PPT's, informal meetings, frustrating events and mediation. They do not feel that they can delay any longer. To turn a phrase: 'Education delayed is education denied'. So, by the time they have gotten to the point of filing for due process, the apprehensions and tensions are already high. The assignment of the burden of proof plays no part in this.

4. Argument: The process needs to change because it is expensive for the Districts due to the legal fees associated with it.

Paradoxically it is simultaneously argued that families should be required to shoulder this burden because “(a) strong parent bar readily assists parents in presenting due process complaints throughout the State”. Is it presumed that this legal representation for the parents is free? We can assure you it is not.

It is also argued that parents are amply supported by advocates who serve around the State to assist parents – but again, for a fee (and then, not in due process hearings).

5. Argument: The fee shifting provisions of the law remove or reduce the cost to the families of challenging the student’s program:

First, the fee shifting provisions referred to by the Districts rarely come into play since most of these matters settle on the eve of the hearings or even during them (and after the parents have spent thousands of dollars already). In addition, at the time that the families embark on this process, they have no idea how far it is going to go. They are required to pay hefty fees up front and continue to pay as the matter proceeds. At some point many of the families become bled dry and may be forced to settle on less than optimal terms due to these expenses.

Placing the burden on families will result in discrimination against low-income families, families who do not speak English well, and families who are not well educated in their rights. The costs of hiring advocates and/or lawyers to gather information and work through due process with school districts will automatically prevent poor families from working for their child’s right to an appropriate education. Indeed, even middle and upper middle class families will have difficulty in adding new costs to the tremendous costs many of us already shoulder for therapies, medications, and support services for our children outside school—especially when the services provided by the school are insufficient.

6. Argument: Some families through the mere threat of going to due process are able to get entire Districts to bend to their wishes and thus have a “disproportionate effect” on the whole process.

Again, this is really a broad attack on the entire system and not really a justification for changing the burden of proof.

A more realistic scenario is for the families to feel that with the delay or denial of services they are forced to contemplate filing for due process. They realize (a) that this would cost the family thousands of dollars that they can ill afford, and (b) will delay the provision of the much needed services pending the outcome of the process (usually something their child can ill afford). In this way the families can feel as if they are held hostage and force them to cave in to a less-than-optimal program.

7. Argument: The last argument made is to bemoan the cost of the whole process.

Once more, this has little or nothing to do with which side has the burden of proof during the proceedings. The hearing will cost what it costs. The assigning of the burden of proof while in the middle of this process carries no price tag.

In conclusion we would like to take this opportunity to thank the Commission's Special Education work group for allowing us this chance to express our views. This issue has served to galvanize our groups and to form this coalition in an attempt to let our legislators know how important this matter is to us. We are deeply committed to this position and will work tirelessly to see that the assignment of the burden of proof as it is now remains the status quo.

This letter is respectfully submitted to the MORE Commission's Special Education Work Group by organizations and groups from across Connecticut. Collectively we represent hundreds of families who are united in opposing this effort to unfairly alter the terrain of the due process procedure making it even more difficult for the families to traverse it.

Your time in reviewing and considering this matter is greatly appreciated.

The CONNECTICUT SPECIAL EDUCATION COALITION

NorwalkSPEDPartners

SPED*NET New Canaan

SPED*NET Wilton

Darien SEPAC

Stamford Coalition of Parents Expecting Success (SCOPEs)

Bristol Special Education PTO

Stratford SEPTA

Special Education PTO Network of Milford

Special Education Alliance of Newington

Success Special Education PTO

Connecticut Special Education PTO Alliance

Connecticut Parent Advocacy Center (CPAC)

Association of Parents of Exceptional Children and Siblings (APECSct)

Connecticut Autism Action Coalition (CAAC)

SmartKids with LD (Westport)

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