Testimony of Andrew A. Feinstein
Before MORE Commission
Special Education Select Working Group
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Mr. Chairman and Members,

I appreciate the opportunity to appear before you to discuss the proposition that changing which party has the burden of proof in special education due process hearings will constitute "a new approach to state and local government in Connecticut that will make our state more economically competitive in the short and long term."

Whatever else switching the burden of proof might do, I can assure you it has nothing to do with municipal opportunities or regional efficiencies. As the Commissioner of Education made plain in his report to the legislature of February 1, 2012, changing the burden of proof will produce no cost savings. It certainly has nothing to do with regionalization. So, consideration of the burden of proof in due process hearings strikes me as being outside the jurisdiction of this panel and, frankly, a diversion from your assigned task.

Special education in Connecticut is ripe for consolidation. We have 169 public school systems, 17 regional school districts, 2 unified school districts, and a technical school system. Each has a special education director. Many have special education administrators and support staff. This mob of administrators adds costs, muddies uniform standards, and weakens the special education system. Most states organize schools on a county basis, so in Maryland there are 25 school superintendents and 25 special education directors, in a system that has 56% more students and 49% more special education students than does Connecticut. We have too many administrators, too many local fiefdoms, too much local discretion. We can save the taxpayers money and create a stronger special education system by forcing regionalization.

Connecticut, like the rest of the country (other than the three outlier jurisdictions of New York, D.C. and Puerto Rico) has precious few due process cases. Connecticut has around 69,000 of its 550,000 students designated as eligible for special education, which is 12.7%, or slightly below the national average of 13.05%. For the past six years, we have ranged between 194 and 241 due process filings per year, or about 3 filings for every 1,000 special education students. Cases going all the way through a hearing to a final decision have ranged between 7 and 21, or between 1 and 3 for every 10,000 special education students. The average length of hearings has dropped to four days. This is not an out of control system. Indeed, Connecticut is third in the nation in rate of mediation filings. And, two-thirds of cases going to mediation settle at mediation. We have a system that appears to work well.

Here is the bottom line on due process: school districts are required to provide a free appropriate public education in the least restrictive environment to children with disabilities. For whatever reason – lack of funding, lack of qualified staff, a mistaken belief that high-priced baby sitting is all that is required – school districts frequently fail to meet this requirement. I ask each of you to read the Report of the Office of the Child Advocate on the Sandy Hook Shooting. The report shows how Newton failed to evaluate, failed to identify, failed to provide services for, and

failed to educate Adam Lanza. One of your members, Mike Regan, was special education director at the time. He had the reputation among parent attorneys and advocates for fighting at every opportunity to reduce special education services. Yet, while Newtown was considered to be one of the worst districts for kids with disabilities, it was not and is not the only one. The failure of Newtown to provide a free appropriate public education to Adam Lanza is, tragically, being replicated throughout Connecticut on a daily basis. In most cases, parents lack the time, money, knowledge, or energy to fight back and demand the education that their child deserves. When parents do decide to devote the emotional energy and substantial financial resources necessary to challenge inadequate programming by filing for due process, it should be up to the school district, with its paid staff, paid lawyers and monopoly on information, to prove that its program is appropriate.

Let's be real. There exists only one conceivable reason that school boards think that placing the burden of proof on parents will save money. That is, switching the burden of proof will make it more difficult for parents to challenge their child's special education program. Because programs will be harder to challenge, schools will be able to get away with offering weaker and less expensive programs. They want the burden of proof switched to parents to make it less likely they will be held to task for inadequate special education services.

So, let's call this proposal for what it is: It is a proposal to erode the responsibility of school districts to provide a free appropriate public education for children with disabilities in Connecticut. It is based on a belief that it is a waste of money to educate children with disabilities. Indeed, watching school administrators pit special education against all-day kindergarten or against gifted programs or against more sports makes clear that the underlying assumption is that spending for children with disabilities is a waste of tax dollars.

To my mind, such a view is bigoted and shortsighted. Those of us who practice in the field know that a good special education program often makes the difference between a young adult who is a wholly dependent ward of the State and a young adult who can live and work independently. Special education makes the difference for a dyslexic child between a menial job and a professional position, based entirely on learning how to read. And, as the Sandy Hook tragedy taught us, special education can make the difference between an individual whose mental illness leads him to senseless violence and an individual who has learned some coping and social skills.

Make no mistake: placing the burden of proof on parents is a stealthy, yet lethal blow at special education. Of course, making that policy determination is far outside the jurisdiction of this panel. It is also terrible policy.