Testimony of Andrew A. Feinstein
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Special Education Equity for Kids in Connecticut (SEEK)
To Select Committee on Special Education
April 21, 2025

Senator Gadkar-Wilcox, Chairwoman Khan, Senator Kissel, and Representative Courpas, and members of the Select Committee:

We are pleased to be able to present testimony to you today. SEEK is a statewide organization of parents, providers, advocates and attorneys focused on protecting and expanding the rights of and the quality of education for students with disabilities in Connecticut. We advocate before the Legislature and the Executive Branch, we produce webinars, we hold a large annual conference, and we provide a clearinghouse for parents.

We will be blunt: Raised Bills No. 7277 and No. 1561 represent a brutal and direct attack on the educational rights of students with disabilities in Connecticut. They were drafted in ignorance of settled law. They reflect a profound misunderstanding of the continuum of special education services. They should not be favorably reported out by this committee and, if they are, they should be rejected by the Senate and the House.

To be more specific, if sections 1 through 7 and sections 41 through 43 were deleted, we could support the bill with reservations. As the bill was raised, however, it is a radical attack on the rights of students with disabilities and on the entire special education system.

These identical bills contain four major elements. First, there is the creation of a rate setting system, new licensure requirements, and new levels of oversight of private special education programs and of Regional Education Service Centers. Second, there is a dramatic rewriting of the current special education due process hearing procedures. Third, there are a series of new grant programs. Fourth, six major issues are thrown to the Building Educational Responsibility with Greater Improved Networks (BERGIN) Commission for analysis and recommendation.

The legislation is clearly compelled by the desire to reduce the cost of special education to school districts. Much of the effort to reduce out-placements is based on the belief that out-placements cost more than in-district programs. This belief is not grounded in any evidence. Planning and Placement Teams (PPTs), including parents and school officials, come together and determine the accommodations, modifications, services and supports the student needs to receive a free appropriate public education (FAPE) in a document called an Individualized Education Plan (IEP). Whether the student is placed in district or out-of-district, the student needs to be provided what is the IEP. There is no reason to believe and no evidence to suggest that a complicated IEP of a severely impaired student can be implemented at a lower cost within a school district than at a private school.

Further, the radical changes in the due process procedures appear to run afoul of settled federal law and constitutional due process protections. Enactment of the provisions of sections 41 and 42 of these bills will undoubtedly produce a flood of litigation which will substantially add to the costs of local school districts.

Before engaging in a section-by-section analysis, I will return to the four main themes. First, the bill has numerous provisions that cripple the operation and discourage the use of out-of-district placements, apparently based on the belief that they cost too much or provide an inferior educational product. As noted above, there is no evidence of the former. As to the educational quality issue, every student outplaced under an IEP has an annual review by the sending district that examines the progress made. If the student fails to make meaningful progress on his or her goals and objectives, the district is obliged to make a change. Many of the 7,500 students outplaced have such severe disabilities that measurement of educational progress is challenging. Still, there is nothing whatsoever in this bill that provides better oversight of educational progress.

The critical fact is that we need these placements as a part of the continuum of educational placements. Many have long waiting lists. For example, Hubbard North which opened recently in Rocky Hill has 20 enrolled students and a waiting list of 50. It takes time, money and staff to build up capacity. District special education directors do not lightly outplace students. They do so when there is no way that the student can be educated within the district. There can be no doubt that this bill, if enacted, would reduce the number of slots for disabled students to be outplaced. A rate schedule, designed to reduce costs, will convince many operators that the income available from tuition and fees is insufficient to cover costs and close up shop. Every day my colleagues and I get calls from parents reporting that their disabled child is stuck at home with no educational placement. In most cases, the district is trying to find a slot at a private special education school but is not being successful. A parsimonious rate schedule would result in hundreds more Connecticut students being deprived of any education.

Second, the bill places the burden of proof for parents to prove that the district failed to offer an appropriate program in cases seeking outplacement. Connecticut has, for the past 50 years, placed the burden of proof on the school district that proposed the program and has the information to support its determination. Switching the burden of proof now is plainly an attack on students with disabilities and their parents. Moreover, the two relevant sections (§§41-42) make numerous other changes that are contrary to settled law in the Second Circuit and, in cases, violate the guarantee of due process of law.

Third, the new grant programs – the special education offset grant (§8), the special education transportation grant (§9), the competitive grant to create or expand in-district programs (§12), the competitive grant program to educators and paraeducators (§33), and the grant program for support services for special education students with trauma (§54) – are all nice ideas but we all know that they will not be funded in the budget. Let's not delude ourselves or anyone

else by claiming that this bill does anything about the critical staffing shortages of special education teachers, related service personnel, and paraeducators.

Fourth, as one of the tri-chairs of the Special Education Services and Funding Task Force, I know that a volunteer task force, without professional support, is severely limited in addressing critical questions. The six questions assigned to the BERGIN Commission all take substantial research and data analysis. If we seriously want answer to these questions, the Legislature needs to provide for staffing. If not, let's refrain from claiming we are.

The following is our analysis of the bill, section by section, including our position and the questions we have. Many of the provisions in the bill have unknown provenance and murky purpose. We ask the drafters of this legislation to explain many of these provisions.

Section 1:

Adds new definitions of "Charging entity", "Provider of special education transportation services", "Private provider of special education services", and "Unilateral placement". Initially, it should be noted that the bill does not remove Gifted and Talented students from the existing definition of "A child requiting special education". Decoupling gifted and talented from special education was a Task Force recommendation.

As to the new definitions, "charging entity" is extremely broad, including RESCs and transporters, but does not include unapproved private providers. "Private provider" using the definition in CGS §10-91g, which reads "any private school or private agency or institution, including a group home, that receives, directly or indirectly any state or local funds as a result of providing special education services to any student with an individualized education program or for whom an individual services plan has been written by the local or regional board of education responsible for educating such student." Neither definition includes private SLPs, OTs, PTs, or BCBAs hired by school districts. Additionally, ESS, which works on contract in many districts, is not included. We believe that RESC programs should be subject to the same rules as private special education schools. Being public entities, they should probably be subject to heightened scrutiny.

The definition of "unilateral placement" is troubling and inconsistent with 20 U.S.C. §1412(a)(10)(C)(ii) which reads: "If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency **had not made** a free appropriate public education available to the child in a timely manner prior to that enrollment." The proposed definition in R.B. 7277 purports to limit unilateral placements to cases where the local "board of education is **not able** to provide an appropriate program." There is a massive difference between a board's ability to provide a program and the board's

unwillingness to provide such a program. Moreover, the timeliness requirement in the federal law is absent from the definition in R.B. 7277. This is just one of many inconsistencies between this bill and federal law. A state may have a law that is more protective of students with disabilities than the federal law but may not go below federal standards. *Burlington v. Department of Education*, 736 F.2d 773, 780 (1st Cir. 1984), *affirmed,* 471 U.S. 359 (1985).

Section 2:

The rate setting system design is given to Office of Policy and Management (OPM), in consultation with the Connecticut State Department of Education (CSDE). We oppose establishing a rate setting system. Notwithstanding that, we fail to understand why this educational function is given to a state agency that has no expertise in education.

Section 2 gives OPM six months to collect data an propose a rate setting scheme to apply to all charging entities. OPM is instructed to only look at the operating expenses of charging entities, even though such schools have capital and administrative costs as well. In that many Regional Education Service Centers (RESCs) and Approved Private Special Education Placements (APSEPs) charge on an a la carte basis for services mandated in a student's IEP, the quantity of rate setting is enormous and likely cannot be completed in six months. Further, this compressed time schedule gives private providers no time and means to challenge the rates set by OPM. Finally, and most importantly, OPM is not instructed to compare the rates to those spent by school districts in providing similar services in district. Indeed, that should be one of the first questions asked: are private providers charging more than it would cost to provide the same service in district.

Further, if the idea is to set a rate for each professional category, will there be an adjustment for length of service or experience? Will there be a geographic variable, in that the cost of hiring a professional in Greenwich is higher than hiring the same professional in Enfield? What about overhead? Will there be a standard percentage of overhead? In setting that percentage, will OPM look at the level of overhead in public schools? How will OPM determine appropriate staffing levels? Staffing is obviously dictated by the IEP requirements of the students in the school. Will OPM go through the IEPs of each student (7,500), placed at each APSEP (88)? And this will all be done in six months, with no opportunity for notice and comment?

As these questions indicate, this provision has not been thought out. We would welcome a serious study of the feasibility of a rate setting system. What is in this bill is neither well considered nor responsible. Outplacements are expensive largely because the students with the most complex needs are the ones who are outplaced. These students have the most demanding IEP. The RESCs and APSEPs are contractually bound to provide the services contained in the IEP. They face the same tight employment market that public schools face but, due to their contractual obligations, they need to pay what the market will bear to bring in staff.

Rather than waste our time on this dangerous rate setting expedition, we ought to be considering two questions: First, can the same services be provided at lower cost by the district? Second, does the district have the staff, space and resources to educate the student? The answer to the second question, in virtually every case, is no; the student would not have been outplaced if the district could meet the student's needs.

Section 3:

The bill requires that the universal special education and related services rate schedule be published by January 1, 2026, and be implemented for the school year starting on July 1, 2026. This section makes clear that "such rate schedule shall include an individualized rate for each special education service." Apparently, there is no provision for regional rates, even though hiring a speech pathologist in Greenwich costs substantially more than hiring a speech pathologist in Enfield. Further, the section provides that the rates need to be adjusted every other year. If a district pays more that the rate schedule, the district cannot apply for excess cost reimbursement for that placement. Any charging entity that charges more than the prescribed rate is prohibited from accepting any additional students from any school district. By April 1, local districts are informed of the rate schedule, and it is published online.

Under this bill, we are rushing blind and headlong into extremely dangerous waters. Each operator of a RESC or APSEP will conduct their own financial analysis. If the analysis shows that the school will lose money under the rate schedule, the operator will cease providing the service. There are already too many students with disabilities languishing at home without a placement. If the rate schedule reduces the number of available openings in the state, as it surely will, the number of students left without a placement will skyrocket. That is both legally and morally unacceptable.

There is another equally frightening scenario. Virtually all students at APSEPs are placed by districts under IEPs. If the school decides to relinquish its state approval, those students placed under IEPSs have the protection of stay put, pursuant to 20 U.S.C. §1415(j). Language in section 5 purporting to abolish pendency placements at unapproved schools is clearly violative of federal law.

Section 4:

A charging entity cannot raise rates during a school year, except that OPM can permit a change if there is a substantial increase in the cost of providing services to a student. The bill is silent on the more frequent scenario in which the private provider calls a PPT and seeks an amendment to the IEP to provide additional services because the student needs those additional services. Again, having OPM make these determinations makes no sense. Changes in needs during the school year are clearly educational decisions that need to be made by an entity that has expertise in special education.

Section 5:

Conforms CGS §10-76d(d) to require that the contract between the school district and the private provider reference the universal special education and related services rate schedule. Further, the section is amended to strip the right of a PPT to place a student at an unapproved facility, permitting such placements only by order of a hearing officer or a court and only if such judicial officer finds that there is no approved program that can provide the student with a FAPE. This adds a whole new area of litigation to any action to recover fees for a unilateral placement. Further, this requirement is certainly inconsistent with Supreme Court decision in *Florence County v. Carter,* 510 U.S. 7 (1993), holding that a district cannot refuse to fund a parent's placement at an unapproved school because the school did not have state approval. The rule out provision at lines 228-230 is also precluded by federal decisional law.

This effort to run roughshod over clear federal law presents two costs to school districts. First, any attempt to comply with the provisions in this bill will result in expensive litigation, likely with an adverse outcome for the district which will compel the district to pay attorney's fees as well as the cost of placement. Second, special education directors and superintendents will be left in a quandary over what to do, facing two contradictory directives.

Section 6:

Defines "reasonable costs" as the cost set by the rate schedule. Further, the section explicitly overrules the determination of the State Board of Education, affirmed by the Superior Court, that reasonable cost means actual cost. This overruling of a recent highly litigated case is unprecedented and irresponsible. The victims of this change are the charter schools which educate Black and brown students in Connecticut's poorest cities at a lower cost than do the public schools. Charter schools pay what is required to fulfill the IEPs of their special education students. Paying them only what is on the rate schedule may well force them to not meet the IEPs of those students. This provision is, in effect, an effort to shortchange the neediest providers of educational services to the neediest students.

Section 7:

Amends the excess cost provisions of CGS §10-76g to reduce the threshold to three times per pupil costs for a student previously outplaced who is now receiving in-district special education "without the assistance of any third-party contractor". In several districts, the local district hires a private provider to run an in-district program. Stamford, for example, hires Aspire to run several autism rooms in their public schools. Strangely, the bill would permit reimbursement for the costs of such a program if it was run by school personnel, but not where it is contracted out.

The Special Education Task Force recommended a threshold of three times per pupil for all in district programs. The reason is that a large portion of the out-of-district placement cost is

transportation. This cost is much lower for a student placed in district. Limiting this to students brought back from out-of-district placements does not make a great deal of sense. The idea of the excess cost grant is to serve as a catastrophic insurance program for very expensive IEPs. Whether the student was previously outplaced is entirely irrelevant to the purpose of the excess cost grant.

In summary, SEEK asks the deletion of sections 1-7 of this bill and their replacement with a study of the feasibility of establishing a fee setting schedule. Further, we are well aware of allegations of gouging and profiteering. We think asking the Auditor of Public Account to audit the books of a sample of the APSEPs and RESCs would provide us with a benchmark. In addition, the current CSDE rules for APSEPs require each APSEP to file details of their financial operations each year. We have seen no evidence that CSDE does anything with this information. We suspect that a serious analysis of this reported information would provide leads for further auditing of specific providers. Further, we are concerned about the quality of special education in all schools in Connecticut – public, charter, APSEP, RESC, etc. Under current law, each district needs to review the success of each outplacement on an annual basis. We would like those reviews to be more intense for all placements. Of course, the paucity of available outplacements discourages districts from searching reviews because often no alternative placement is available. Sections 1 -7 of this bill will make the situation worse as the number of available out-of-district placements dwindles.

Section 8:

Creates a special education offset grant, based on providing a 50% weight for the number of special education students in the district. Subsection (e) says the grant can only be used for in-district special education purposes, including staff salaries, equipment and curriculum materials. The grant cannot be used for administrative costs or for services provided by a third party. If a local district violates this limitation, the district forfeits twice the amount of the misspent money, although the State Board of Education can waive the forfeiture. Each district must file a report, except for district receiving less than $10,000 of grant money. The bill contains no estimate of the cost of this grant program.

The issue with this provision is that many districts hire by contract related service personnel, either because the district does not need a full-time staff person, or the district is unable to hire a skilled person on staff. Permitting the grant to only be used for staff salaries, equipment and curriculum materials makes little sense and will reduce the usefulness of this grant.

The non-supplanting language is probably inadequate to ensure that the money from this grant goes to augment special education services in districts.

So, SEEK supports this grant program and will work to see that it is funded.

Section 9:

Creates a special education transportation grant program, not to exceed $50 million, to be administered by OPM. The section does not make clear whether the grant money can be used to fund bus monitors or aides needed on vans. In that such staff is needed for the safety of certain students, they should be covered by the grant. With that understanding, SEEK supports this grant program.

Section 10:

Provides that the special education transportation grant program is funded at $50 million dollars from the Special Transportation Fund. SEEK believes this is an appropriate use of the Special Transportation Fund.

Section 11:

The Department of Transportation (DOT) is tasked with developing coordinated bus routes for outplaced special education students. Districts are required to provide information to DOT but are not required to utilize the proposed recommended coordinated bus routes. This section is silent on the maximum length of time a student may be in a bus. Current regulation limits it to one hour, without parental consent.

SEEK is concerned that this coordination program is administered by DOT, not CSDE. The transportation needs of students with disabilities are unique. Any coordinated bus route system needs to take into account the special needs of the students being transported. CSDE has the expertise to create such a system. DOT does not.

Section 12:

Creates a competitive grant program within CSDE to support the creation or expansion of in-district programs. One of the stated uses of these grant funds is "for the provision of early interventions for students with dyslexia and multilingual learners." In developing criteria for the approval of these grants, the Commissioner shall give priority to alliance districts. The grant cannot be used to fund a contract with a private provider.

The Special Education Task Force recommended a fund of $20 million to pilot such a grant program. The Governor recommended $10 million. Both are just a drop in the bucket compared to the need. Further, the money needs to be made available without fiscal year limitation. There is not justification for precluding the involvement of a private provider. Given the staffing shortage, utilizing a private provider may be the only way to start up such a program. There is also a history of districts starting programs and then dropping them when a new superintendent or new board comes onto the scene.

So, SEEK would support a more robustly funded grant program, without any prohibition on involving a private provider, and with the requirement for a substantial contribution by the local school district to make continuation of a successful program more likely.

Section 13:

A 15% add on is provided for bonding to build out new programs, but only if the program is located in a school building "being used to provide a program of general education for nonspecial education students."

The Governor recommended $4 million in bonding authority. While SEEK wants students with disabilities to be educated side-by-side with their nondisabled peers, we think the limitation in the bill is not appropriate. Many of the students outplaced are outplaced because their behavior poses a danger to staff and students. If the price for bringing these students back in district is a separate facility, we think it is a price worth paying.

Section 14:

The Commissioner of Administrative Services, in consultation with CSDE, can approve grants for minor capital improvements in a school building "being used to provide a program of general education for nonspecial education students". SEEK's position on the program needing to be in an "existing school building [that] is also being used to provide a program of general education for nonspecial education students" is the same. It is a limitation that is not appropriate.

Section 15:

The Department of Administrative Services (DAS) needs to give notice to school districts of the new authority from Section 14. SEEK has no objection.

Section 16:

Any RESC, local board, private provider, etc. that is paid by another school board to provide services to a student must return the prorated portion of any payment if the student transitions out or withdraws from the program during the school year. SEEK has no objection.

Section 17:

Prior to any student transition out or withdrawing from such a placement, the receiving provider must convene a PPT meeting to ensure the student continues to receive a FAPE. This is critical and SEEK strongly supports this provision.

Section 18:

OPM, in consultation with CSDE, shall create a publish a list of all programs offered by RESCs, APSEPs, and local boards. Currently, CSDE maintains such a list of APSEPs. SEEK has no objection to the creation of such a comprehensive list, but believes the responsibility should lie with CSDE, not OPM.

Section 19:

The contract between a district and an out-of-district provider must provide certain information including "the documentation used by such board to determine that such private provider of special education services is more appropriate for the education needs of the child for whom special education is being provided than any public school arrangement." The use of the term "more appropriate' is highly troubling. Under the IDEA, the placement must be appropriate. As between alternative appropriate placements, the IEP Team can select on a variety of factors, including inclusion, cost, or effectiveness. Adding the concept of "more appropriate" is contrary to federal law and could open up a whole new panoply of litigation. Further, SEEK sees no reason for approval by OPM of each contract. Indeed, requiring OPM approval appears to be part of the misguided effort to eradicate out-of-district placements. For these reasons, SEEK opposes this provision.

Section 20:

OPM (not CSDE) is tasked with developing licensure standards for private providers, including the application process, the periods for renewal, minimum requirements and a $5,000 fee for an initial license. Under standards approved by the State Board of Education, CSDE already approves private providers and has a schedule for renewals. It is unclear whether this new licensure requirement is meant to supersede the CSDE process. SEEK sees no justification for stripping CSDE of its long-standing authority to approve private special education placements and sees no benefit in having OPM assume that authority. SEEK opposes this provision.

Section 21:

In a previous session, the Legislature required CSDE to conduct random unannounced audits of district special education programs. This section expands the requirement to include RESCs and private providers, including private providers that are not APSEPs, if they are providing services under contract with a school district. The bill specifies three areas to focus on: employee qualifications, criminal history checks, and questionnaires to parents about the quality of services. Within ten days of conducting the site visit, CSDE will specify any needed corrective actions. Within thirty days, the RESC or private provider need to submit written proof of compliance of face a fine of $100 a day. Further no additional students can be placed at such RESC or private provider. Within fifteen days, CSDE needs to post details about the deficiency and corrective action.

CSDE has done a poor job of auditing the special education programs of various school districts. Part of the problem is the lack of adequate staff. Part of the problem is that CSDE refuses to target audits at districts with a substantial number of parental complaints. Part of the problem is that CSDE has failed to come up with a suitable matrix against which to judge a district's special education program.

This section continues the limited and procedural scope of the review. Expanding the scope of CSDE's audit responsibilities without giving the Department the staff to perform that function is to guarantee failure. Without some mechanism to direct CSDE's audit responsibilities to the districts, RESCs and APSEPs that are subject to the most complaint, the process will fail to meet its purpose. SEEK strongly supports random unannounced audits of all providers of special education, but section 21 fails to achieve that goal.

Section 22:

The current law requiring background checks is amended to include private providers of special education services. All the APSEPs already meet this requirement because it is a requirement of the CSDE approval process, so this section appears largely unnecessary.

Section 23:

Requires RESCs and private providers to notify parents of staffing changes, including vacancies, long-term absences, etc., within five days of it occurring. The notice needs to specify any change in services, any change to staffing rations, and the plan to mitigate the staffing changes. This provision should apply to in district programs as well, particularly since staff absences can give rise to valid claims for compensatory education. SEEK would support a provision that applies to all providers, including in district providers, of special education services.

Section 24:

No recipient provider (local district, magnet, private provider) can transfer a student to another school or facility, except on the request of a parent or on the recommendation of a PPT, or if the PPT determines that such transfer is "more appropriate". The recipient provider must be invited to the PPT meeting but cannot request that such a meeting be held. Again, there is the troubling "more appropriate" language. The provision prohibiting the recipient provider from requesting a PPT is unacceptable and inconsistent with federal law. SEEK opposes this section.

Section 25:

Consistent with the recommendation of the Special Education Task Force, this section directs CSDE to create a model contract for the outplacement of a student. It does not, however, apply to outplacement to a RESC program. SEEK believes RESCs should be subject to the same requirements as APSEPs and would support this section if RESCs were added.

Section 26:

CSDE, in consultation with the Child Advocate, needs to develop and post guidance on the circumstances under which residential placement is appropriate, together with information for parents concerning inclusion. School districts are extremely reluctant to place students residentially. This poses a serious problem because the Department of Developmental Services (DDS) will only approve a residential placement for an eligible student if the student had been placed for the prior 12 months residentially under an IEP fully funded by the school district. The DDS provision needs to be changed so a cost-sharing residential placement can qualify a young person for DDS residential services. An IEP placement is for educational reasons. An adult residential placement is not needed for educational purposes. Hence the DDS regulation is misplaced.

Section 27:

Adds a new reporting requirement for local boards concerning each outplaced student. The report needs to include whether each placement was made by the PPT or a settlement agreement, whether it is to an approved or unapproved provider, the amount being paid, the services provided, and the location of the facility. CSDE will publish the results.

Currently, many outplacements occur through cost-sharing settlement agreements between parents and the school district. Districts insist that parents sign nondisclosure agreements. Because this is public money being spent, SEEK believes the district contribution to these settlement agreements should not be held confidentially, subject to the limitations of the Family Educational Right and Privacy Act (FERPA). This reporting requirement provides for some level of disclosure, but because of the small number of cases in most school districts, the information provided will be limited.

SEEK would support this provision if it contained a ban on nondisclosure agreements.

Section 28:

Requires districts to conduct a Functional Behavior Assessment (FBA) prior to outplacing a student due to challenging behavior, except when conducting such an FBA would put at risk other students or staff. SEEK believes that an FBA is already required under federal law but has no objection to restating the requirement in this form.

Section 29:

If there is a behavioral goal on a student's IEP, the IEP must contain a service to meet that goal. Again, the IDEA requires that a service be provided for all areas of deficit so this provision is unnecessary, but it may be worth restating in this form.

Section 30:

The Transforming Children's Behavioral Health Policy and Planning Committee needs to file a report by January 1, 2027, on behavioral intervention methods, specifically including Ross Greene's Assessment of Lagging Skills and Unsolved Problems, and whether there should be a requirement that staff at private providers be trained in such interventions and best practices for CSDE to audit and monitor use off restraint and seclusion. SEEK strongly supports this provision and believes that implementation of such recommendations could lead to a decrease in the use of restraint and seclusion.

Section 31:

The Legislature previously established the Building Educational Responsibility with Greater Improved Networks Commission (BERGIN), but all the required appointments have not been made, and the Commission has only met once. This bill adds to BERGIN's responsibilities six new studies.

First, a needs-based study to determine if additional special education programs and services are required in the state to meet student demand. The Commission is tasked with developing a new methodology for approval of private providers. The first question is easy to answer without a study: the state is woefully short of special education programs and services. The requirement to develop a new methodology for approval of private providers conflicts with section 20 requiring OPM to establish a program of licensure. Further, there is no indication of why a new system is needed and what is wrong with the current system.

Second, BERGIN is tasked to study the creation of a peer review process for special education programs in districts and to share best practices.

Third, BERGIN is tasked to study the implementation of Tier 2 interventions under a Multi-Tiered System of Support (MTSS), and specifically to look at whether CSDE needs to revise existing MTSS guidelines, whether there should be mandated training in Tier 2 interventions, whether reading intervention should be required before a placement can be made that is reading-related, and incentivizing local board to hire more reading interventionists. SEEK fails to understand why this provision is only focused on Tier 2 interventions.

Fourth, the Commission is mandated to conduct a study of creating a non-teaching administrative special education position to do the paperwork. The Task Force raised this issue and it is worth pursuing, especially in light of the incredibly time-consuming nature of CT-SEDS.

Fifth, the Commission is asked to review and recommend changes in CT-SEDS to make it more accessible to educators and parents. The problems with CT-SEDS go far beyond accessibility. A comprehensive review of the entire system is needed. Educators spend far too long imputing

information, the system often does not allow a district to record programs agreed to with the parents, the system seems to lose students that are outplaced, and the resulting documentation is often unreadable. SEEK recommends a soup to nuts review of CT-SEDS.

Sixth, the Commission is instructed to conduct a study of respite care for families of children with disabilities. This is an important issue but is beyond the scope of special education.

All of these reports are due January 1, 2027. The Commission is provided with no staff support to complete these tasks. There is simply no way a group of volunteer commissioners can accomplish the work assigned.

Section 32:

CSDE cannot approve any new private providers before July 1, 2027. Why? The state suffers from a serious shortage of private providers. This restriction makes no sense. SEEK opposes it.

Section 33:

Creates a new competitive grant program to individual educators and paraeducators for training, education and testing. No budget amount for the grant program and no dollar amount for individual grants are specified, although a grant recipient must commit to three years of service in an alliance district. SEEK supports such a grant program but knows that substantial additional details need to be provided before such a program can be implemented.

Section 34:

CSDE is required to study the availability of paraeducator exams in a language other than English. SEEK supports this provision.

Section 35:

The Connecticut Educator Preparation and Certification Board is tasked to make recommendations to update the preparation and certification requirements for a comprehensive special education endorsement. SEEK noted that the preparatory meetings that led to the creation of the Board and the authorizing statute failed to address special educators. This was strange because the shortage among special education teachers is far greater than among general education teachers. SEEK supports this change.

Section 36:

The State Paraeducator Advisory Council is tasked to make recommendations to update the preparation and examination requirements for paraeducators assisting in the provision of

special education. While SEEK supports this effort, SEEK would also like to see work done on micro-credentialing of paraeducators. We treat all paraeducators as if they perform the same jobs. That is decidedly not the case.

Section 37:

CSDE is instructed to develop a report on CT-SEDS, explaining the purpose of each field, how the data is used, how each field relates to student outcomes, and whether any field exceeds the requirements of the IDEA. Instead of having this as a free-standing section, the bill should have one section dealing with a comprehensive review of CT-SEDS, with the requirement that CSDE fully cooperate in providing information. Further, those conducting the study should have statutory authorization to the restricted parts of the system so they can fully understand how it operates and make appropriate recommendations. Finally, CT-SEDS collected an enormous amount of information. Many questions concerning the delivery of special education in Connecticut should be answerable through the data in the system. The group conducting the study should be instructed to make recommendations concerning the type of reports that need to be produced.

Section 38:

CSDE, in consultation with the BERGIN Commission, will develop a special education workload analysis to establish standards to limit the workload of teachers and service providers. This is a complex task because each student has a different IEP. CT-SEDS should be useful to produce data on varying levels of support required by special educators. SEEK believes that this study should be done by an outside firm, with full access to CT-SEDS, and with the requirement to seek input from special educators.

Section 39:

BERGIN shall make recommendation for legislation to implement the proposed statewide special education workload analysis model on or before January 1, 2027. SEEK believes the study needs to show the feasibility of such a workload analysis model before assuming that implementation is the appropriate recommendation.

Section 40:

The Developmental Disability eligibility category can be used through the child's eighth year. Currently, it is only available through the child's fifth year. This is consistent with the recommendation of the Special Education Task Force and SEEK supports it.

Section 41:

Special education due process hearing procedures are radically changed, as follows:

* Five days before the start of the hearing, each party must outline all claims that the party will raise at the hearing. Under current practice, the disclosure needs to be made five days prior to each hearing day.

* The burden of proof of FAPE rests with the district, except in cases of unilateral placement. In unilateral placement cases, the parent bringing the action must prove the inappropriateness of the districts IEP as well as the appropriateness of the unilateral placement. Under current law, the burden of proving the appropriateness of an IEP always rests with the district.

* The test for meeting the burden of proof is preponderance of evidence except in cases of interim alternative placements, where the standard is substantial evidence. This may or may not be a change because hearing officers rarely articulate the standard of proof they use.

* The bill says that the hearing officer shall give equal weight and consideration to all evaluations presented and used during the hearing. That makes little sense. It is the job of the hearing officer to determine the credibility and accuracy of each evaluation. Indeed, evaluations have different value based on the testing done, the qualifications of the evaluator, and the level of analysis in the report.

* The board needs to go first, except in unilateral placement cases, where the parent needs to go first. This is a change from current law where the school board always needs to go first to prove the appropriateness of the IEP proposed.

* The hearing should be limited to three days, although the hearing officer can extend the time. The average length of a contested hearing is now eleven days, evenly divided between the parents and the school board. Truncating hearings to three days will not permit either side to present their evidence. This problem is made far worse by the additional matters added to the hearing process by section 42. Moreover, expediting hearings will reduce the pressure on both sides to settle and will likely mean more cases go to hearing. Negotiated settlements are far better for the student and the district than are hearing officer decisions. More shorter hearings will not save money for districts and will lead to increased acrimony.

SEEK strongly opposes all the changes in this section. Individually, and together, these changes erode the ability of the parent to be a full participant in the process of determining an appropriate education for their child. They will mean fewer educational opportunities for students with disabilities and less pressure on districts to provide an appropriate education. The crippling provisions in section 41 are made far worse, however, by the provisions of section 42.

Section 42:

The authority of a hearing officer is changed to require a hearing officer to "consider all programs capable of providing the child or pupil a free appropriate public education in the least restrictive environment." Does this mean that the hearing officer is supposed to investigate possible programs *sua sponte* or that each party needs to investigate and submit evidence of other programs not considered by the PPT or proposed by the parent. This proposal will raise the cost of a due process hearing significantly for both sides. It will necessitate longer, not shorter, hearings. It fundamentally misinterprets the role of a hearing officer, as a neutral quasi-judicial figure who makes decision based on the evidence presented. Indeed, there is a serious question about whether a hearing before such a proactive hearing officer meets the constitutional standard of due process of law.

The section further provides, that if the hearing officer determines the IEP does not provide a FAPE, "the hearing officer shall first consider all services provided by the district, followed by services provided by the charging entity, and if no such services provide" a FAPE, the hearing officer may then consider a placement at a nonapproved private provider. This language creates a procedural briar patch. The parent has to secure an expert who will examine every possible placement by the district, even if never discussed or offered at a PPT meeting, and every possible approved program before concluding that the parent's unilateral placement at an unapproved school is appropriate. This provision runs directly counter to the Second Circuit decision in *R.E. v NYC Dept of Education*, 694 F.3d 167 (2012), holding "testimony regarding state-offered services may only explain or justify what is listed in the written IEP. Testimony may not support a modification that is materially different from the IEP, and thus a deficient IEP may not be effectively rehabilitated or amended after the fact through testimony regarding services that do not appear in the IEP." 694 F.3d at 185. Simply, how can a parent, who has the burden of proof, show that a program never proposed or discussed cannot provide a FAPE?

This section is directly contradictory to settled federal law and misunderstands the role of a hearing officer. It requires fishing expeditions into tangential or irrelevant issues. SEEK strongly opposes section 42.

Section 43:

Requires the State Board of Education to adopt regulations on the burden of proof in unilateral placement cases, consistent with Chapter 54, which is the general provision on adoption of agency regulations. The last time the Department of Education amended its special education regulations; it took many years to do so. SEEK strongly opposes section 43 because it opposes any change in the current requirement that the school district has the burden of showing the appropriateness of its IEP. Further, if the burden of proof is assigned by statute, what need is there for a regulation? What can a regulation add?

Section 44:

CSDE is commanded to update the IEP form to remove short-term instruction objectives and to remove the list of individuals implementing the IEP. In the first place, the IEP form is an integral part of CT-SEDS. If a new form is needed, it should be recommended and designed by the group evaluating the appropriateness of CT-SEDS. Further, there is no justification for removing short-term objectives and the requirement to list those implementing the IEP is part of federal law. SEEK opposes section 44.

Section 45:

CSDE is required to make available on its website a long list of information, much of which is already published. The required information includes state aid and grants, detailed information about students outplaced, stratified data about students eligible for services, and programs eligible for excess cost reimbursement. CSDE on EdSight provides much of the information sought by this section. If additional information is required, the Legislature can make specific requests, rather than requiring constant collection and updating. CSDE lacks the staff to perform the functions already assigned it. Burdening CSDE with more responsibilities, without additional resources, is a mistake.

Section 46:

Requires CSDE to submit a report on best practices regarding dyslexia evaluations. This is already under the purview of the Office of Dyslexia and Reading Disabilities. It is not clear that an additional legal mandate is required.

Section 47:

Directs the DMV to create a special education support license plate, charge extra money for the plate and use the money to fund the special education offset grant. This section is comical. The Committee is really proposing that we fund a $200 million offset grant by selling license plates. Many parents are ashamed to admit that have a student with a disability. So, these license plates will be hard to sell. If we happen to sell 20,000 in a year, we take in $900,000 or less than one half of one percent of the offset grant. We understand that DMV has sold 7,300 Save the Sound vanity plates, so a 20,000 estimate is probably wildly out of line. More fundamentally, it is demeaning to fund special education through the governmental equivalent of a bake sale. SEEK objects to this provision.

Section 48:

Conforming.

Section 49:

The contract requirement provision relating to out of district placements is amended to include compliance with the universal special education and related service rate schedule. Further the Commissioner of Education is directed to revoke the approval and license of any private provider that fails to charge in accordance with the rate schedule. SEEK opposes this provision because it opposes the establishment of the rate schedule.

Section 50:

Directs the Regents to continue the transitional college readiness program already in effect. SEEK supports.

Section 51:

Creates an Office of Education Ombudsperson covering all aspects of education. It is unclear how this Ombudsperson's responsibilities conform with the complaint process unit of the Bureau of Special Education mandated by federal law. The scope of the Ombudsperson is far broader than just special education. Other states have created Ombudspersons and the results have not been positive. SEEK believes far more work needs to take place studying this issue before the office is created.

Section 52:

Requires each school district to hire or designate an existing employee to serve as instruction support teacher in each school. The instructional support teacher will improve the quality of teaching, learn appropriate curriculum, collaborate with parents and educators on instructional decision make, deliver professional development, provide coaching, assist with classroom management and school climate, and consult on developing IEPs. Again, this is outside the scope of special education. It imposes a significant unfunded mandate on local districts and duplicates curriculum officials already in existence in many districts. This provision does not belong in this bill.

Section 53:

CSDE will provide quarterly training for instructional support teachers. SEEK sees this as another part of the instructional support mandate in Section 52.

Section 54:

Establishes a grant program for districts to provide support services for student who have experienced trauma or have behavioral needs. SEEK supports such a grant program if it is properly funded.

Section 55:

CSDE, in consultation with CPAC, will develop a special education family guide. Such a guide already exists. No new guide is needed.

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SEEK represents dozens of advocates and attorneys and hundreds of families of children with disabilities. We had high hopes for the work of the Select Committee and are grievously disappointed in this work product. The bill does nothing to improve the quality of special education in Connecticut. It fails to address most of the important issues we raised in our submissions to the Select Committee of February 26 and March 31. Instead, numerous sections of the bill are aimed at destroying the present continuum of services by eliminating numerous out-of-district placement opportunities. The bill guts parental rights under due process. There are salutary sections which should be passed. But, taken as a whole, this is a bad bill and should be defeated.