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SUBMITTED WRITTEN TESTIMONY BY CONNECTICUT SPECIAL EDUCATION ATTORNEY JEFFREY FORTE OF FORTE LAW GROUP LLC AGAINST RAISED BILLS No. 7277 AND 1561

Dated April 19, 2025

Dear Co-Chairs Gadkar-Wilcox and Khan, Ranking Members Kissel and Courpas, Vice Chair Poulos and members of the Select Committee on Special Education,

Raised Bills Have Red Flags

As a Connecticut special education attorney for parents that have a child with a disability, I am writing to express profound concern and grave opposition to Raised Bill Numbers 7277 and 1561. **These Raised Bills have red flags of the highest order. They are deeply alarming and will have catastrophic implications for both public-school districts and parents of children with disabilities alike across the entire state of Connecticut if passed**.

I strongly implore this committee to work collaboratively with all knowledgeable stakeholders – special education service providers, parents, advocates, attorneys and school district special education administrators and staff – to develop solution-based policy and law that truly support the needs of students with disabilities in our Connecticut schools.

Brief Background

By way of brief background, my firm and I collaborate, advocate, mediate and, when necessary, litigate (in that order) with school districts to ensure that a free appropriate public education (FAPE) is provided for students with disabilities through an Individualized Education Plan (IEP) that complies with the legal requirements of the Individuals with Disabilities Education Act (IDEA). I have attended countless Planning and Placement Team (PPT) Meetings, participated in hundreds of mediations and have successfully handled due process hearings, as well as multiple expulsion hearings. As a steward of the Connecticut student disability rights community, I currently serve as an Executive Board Member to both the Connecticut Bar Association, Education Law Section (CBA) and Special Education Equity for Kids of Connecticut (SEEK of CT), as well as a member to the Counsel for Parent Attorneys and Advocates (COPAA). I have also previously been invited by the Connecticut State Department

of Education (CSDE) to serve on the interviewing committee for new due process hearing officers, as well as to review drafts of the now published school district guidance entitled, *BCBAs in Schools: Guidelines and Professional Standards for Connecticut*.

I also am a former state approved provider of the Surrogate Parent Program through the Connecticut State Department of Education (CSDE) and have litigated due process hearings to fully adjudicated decisions before CSDE hearing officers. See, for example, Case No. 24-0533, https://portal.ct.gov/-/media/sde/sped-hearing-decisions/2024/24-0533-fully-adjudicated-decision.pdf. I have published legal articles on special education law, presented free legal seminars and programs on special education law to providers, private schools, students and families, list special education resources on my law firm's website, www.fortelawgroup.com, and produce a free national podcast for parents called *Let's Talk Sped Law*, see www.letstalkspedlaw.com.

Raised Bills Numbers 7277 and 1561 Do Not Reform - They Dismantle

There is no way to spin this so please allow me to be pointedly direct – here is the hard truth – Raised Bills Nos. 7277 and 1561 were crafted in blatant disregard of well-established legal precedent. They are not merely misguided—they are fundamentally rooted in a dangerous misapprehension of the very framework that underpins the continuum of special education services and are in direct violation of federal law.

Their advancement would do irreparable harm to children with disabilities and dismantle decades of progress in educational equity. This committee must not, under any circumstance, approve these drafts favorably. **Should these Raised Bills advance, they will be in direct violation of federal law going against the Individuals with Disabilities Education Act (IDEA) as well as established legal precedent rendered by the Second Circuit and the Supreme Court of the United States**.

An Overview of the Structural Failures of the Proposed Legislation

These companion bills introduce four sweeping changes that—collectively—would diminish service availability, reduce accountability, and erect unlawful barriers for families seeking to protect their children's education rights:

1. The creation of a rate-setting mechanism that targets out-of-district special education placements and authorizes new layers of licensure and oversight without due stakeholder process.

2. A radical and legally unsound reconfiguration of special education due process hearings, undermining fair hearing standards, shifting heavier legal burdens of proof onto parents

in direct violation of established federal law, and gutting the critical fact-finding responsibility of the appointed CSDE impartial due process hearing officer to appropriately weigh the credibility of evaluations and witnesses, along with limiting the hearing officer's role in determining the number of hearing dates based on the complexity of the child's needs and programming.

3. The introduction of a series of unfunded or underdefined grant programs that are unlikely to survive the appropriations process.

4. The deferral of major unresolved issues to the Building Educational Responsibility with Greater Improved Networks (BERGIN) Commission—an entity that lacks the infrastructure, staffing, and authority to meaningfully address such sweeping questions.

Disproportionate Targeting of Out-of-District Placements

Connecticut's continuum of placement options is not a luxury—it is a legal mandate under the IDEA. Out-of-district placements are not optional. They are required by law when a school district is unable to implement a child's IEP or offer an appropriate education within its own settings. The belief—underpinning much of this legislation—that outplacements are categorically more expensive and therefore should be disincentivized is not only unsupported by empirical data but fundamentally misconstrues how special education funding really works. Cost is driven by services in the IEP, not by geography and not by school district. The same IEP, regardless of whether implemented in-district or out-of-district, must be fully honored.

What this legislation proposes is a bureaucratic mechanism for rationing educational services by suppressing provider reimbursement through state-controlled rate caps. The inevitable consequence: private special education schools will be forced to close their doors. We are already seeing shortages across the state. If passed, this bill will leave hundreds of more children without a legal placement—violating their rights and opening districts to liability. Justice delayed is justice denied.

An Entire Wholesale Assault on IDEA Procedural Safeguards and Due Process

What is most disturbing is Sections 41 and 42 of the proposed legislation that amount to a legal and constitutional affront to families of children with disabilities. Among the most egregious changes:

- **The transfer of the burden of proof to parents in unilateral placement cases**, reversing decades of Connecticut legal precedent and erecting an insurmountable procedural barrier for families.

- **The statutory requirement that hearing officers give "equal weight" to all evaluations presented**, which impermissibly intrudes on the adjudicatory function of hearing officers and violates standards of evidence evaluation.

- **Mandated time-limited hearings and increased procedural complexity**, which would dramatically disadvantage parents already struggling to secure legal representation or expert witnesses.

These changes directly fly in the face of the IDEA, settled Second Circuit case law, and basic constitutional guarantees of due process. **If enacted, they will undoubtedly lead to increased litigation and federal challenges both on a case-by-case basis and systemically — and the state will lose**.

Grant Provisions That Are Rhetorical, Not Real

While the bill contains a slate of proposed grant programs—ranging from transportation to trauma services—there are no line-item appropriations, no fiscal estimates, and no implementation mechanisms. Worse, several of the grants explicitly prohibit contracting with private providers—an inexplicable exclusion given Connecticut's persistent special education staffing crisis.

Let us be honest with ourselves and with the public: these are unfunded concepts, not viable policy proposals. They give the illusion of investment while doing little to address the systemic shortfalls that schools, staff, and families face every day.

BERGIN Commission: Deferral Without Capacity

The bills offload critical policy decisions to the BERGIN Commission—a well-intended but under-resourced body with no demonstrated capacity to analyze or implement the six major tasks assigned to it. These include studying Tier 2 interventions, special education staffing workloads, and systemic programmatic changes—all without dedicated researchers or clear funding. **This is legislative buck-passing, not problem-solving.**

A Dangerous and Unlawful Rate-Setting Framework

The proposed rate-setting system places educational oversight in the hands of the Office of Policy and Management (OPM)—a fiscal agency with no expertise in special education, IDEA compliance, or IEP implementation. OPM is tasked with establishing individualized rates for every category of special education service within six months, without meaningful input from providers and with no clear due process protections for appeal.

There is no regional cost adjustment, no clarity on how overhead or staffing ratios will be addressed, and no mechanism for aligning rates with actual costs incurred by public schools delivering similar services. **This provision will lead to the closure of providers, limit placement options, and harm students with the most significant needs.**

Violations of Federal Law: IDEA, Section 504, and Constitutional Due Process

Multiple provisions in this legislation conflict with federal law, including:

- **The IDEA's stay-put protections**, which cannot be overridden by state statute;
- **The Supreme Court's decisions in Florence County v. Carter** and **Burlington**, which prohibit states from conditioning funding based on school approval status;
- **The Second Circuit's decision in R.E. v. New York**, which prohibits post hoc rationalizations of district placements not offered through the PPT process.

This bill introduces a series of provisions that are not only procedurally oppressive but legally unsound, violating both the spirit and letter of the (IDEA) and well-established constitutional due process protections. Specifically:

1. It improperly **shifts the burden of proof** in unilateral placement cases from the school district to the parent;
2. **Arbitrarily caps due process hearings at three days**, irrespective of case complexity;
3. **Strips hearing officers of their discretion** by requiring them to assign "equal weight" to all evaluations, regardless of quality or credibility;
4. **Imposes a blanket requirement** that all evidence be submitted five days before the hearing commences—rather than five days before it is introduced—thereby prejudicing parties who rely on rebuttal or responsive documentation; and
5. And most concerning, **it mandates a rigid sequencing of placement consideration**, compelling the hearing officer to exhaustively evaluate all public and approved options before even considering a non-approved placement, no matter how clearly superior or necessary.

The Shifted Burden of Proof – A Constitutional and Practical Obscenity

The reallocation of the burden of proof to parents in unilateral placement cases is not a mere procedural tweak—it is a direct assault on fairness and access to justice. This provision demands that parents, often without access to the underlying data or the educational expertise wielded by school districts, prove the inadequacy of the Board's program—a task that borders on the impossible.

This burden shift is particularly insidious in cases where parents seek multiple forms of relief—such as reimbursement for a prior placement and prospective placement going forward. The proposed legislation offers no guidance on who bears the burden in such mixed-relief claims, creating procedural chaos and inviting litigation. It is a punitive provision that disincentivizes appropriate parental advocacy and chills the exercise of rights under IDEA. **It also strips state appointed CSDE impartial hearing officers of their role as the fact finder with the application of legal authority, a direct violation of the IDEA.**

Arbitrary Three-Day Hearing Limit – Denial of a Full and Fair Opportunity to Be Heard

Capping due process hearings to three days, regardless of the complexity of the child's needs, the number of witnesses, or the nature of the claims, constitutes a complete denial of a fair hearing under IDEA and the Fourteenth Amendment. It disincentivizes early resolution and will actually increase the number of fully litigated hearings. Moreover, if parties are now expected to present evidence evaluating every potential APSEP or RESC placement—and potentially call witnesses from each—this restriction becomes wholly unworkable and legally indefensible.

To put it this way, in the most recent due process case that I tried and that was fully adjudicated and won by the parents, the board of education presented over five school district witnesses, submitted over six dispositive motions, and had hundreds of pages of numerous exhibits with thousands of pages of transcripts of school district testimony. The board alone required four full days of evidence and hearing. On behalf of my clients, the parents presented two witnesses, along with the two parents, and required approximately two and half days of hearing. Our due hearing was run incredibly efficient by the duly appointed CSDE hearing officer. **To be certain, the hearing officer astutely made decisions on the length and time certain witnesses could testify and provided efficient and fair hearing orders. To pass a law that undermines the responsibilities of the hearing officer violates IDEA and will end up brining the state of Connecticut in as a joined party to due process hearings itself for providing state laws that offer less mandates than those afforded by federal law – a clear legal violation that the state will not win.**

Equal Weight to All Evaluations – A Mandate to Ignore Credibility and Clinical Validity

Mandating that hearing officers assign equal weight to all evaluations is not only a statutory overreach—it is a professional insult to the impartial hearing officer's adjudicative role as the fact finder. **Hearing officers must be allowed to assess credibility, relevance, and reliability.** Not all evaluations are created equal. School districts frequently produce superficial, internally generated reports designed to support pre-determined outcomes. This bill would elevate those documents to equal status with comprehensive, independent evaluations—an affront to both clinical accuracy and procedural justice.

Compulsory Consideration of All Capable Programs – Due Process Violations

Requiring hearing officers to independently consider every conceivable public or approved program—regardless of whether those programs were presented by either party—injects serious due process concerns. It invites hearing officers to function not as neutral arbiters, but as de facto investigators, reaching well beyond and completely outside the record to make determinations based on untested, unchallenged, and potentially irrelevant options. This undermines the adversarial process and risks findings made on extrajudicial evidence, in violation of fundamental fairness, rather than on the evidence presented that should comport and align with the educational needs of the child based on expert testimony and educational evidence that is presented before the impartial hearing officer.

In totality, these provisions do not streamline the due process system—they sabotage it. They tilt the scales of justice squarely against parents and children, raise profound constitutional red flags, and threaten to flood Connecticut's special education system with prolonged, avoidable litigation. This committee must reject them in full.

The state cannot legally enact legislation that provides fewer protections than federal law. Any such attempt to do will fail in court and delay necessary services for the very children these laws are supposed to serve.

Conclusion: A Call to Reject, Not Revise

As a parent-based special education attorney who works every day with Connecticut parents who are advocating for their child's right to learn, I am compelled to say this plainly:

This bill is not fixable. It must be rejected in its entirety.

It undermines the continuum of placements, dismantles due process protections, threatens to defund private special education providers, and imposes an unfunded compliance burden on all stakeholders. Worst of all, it puts students with the most significant disabilities at the greatest risk.

I urge the Committee to abandon this legislation and redirect your efforts toward collaborative, inclusive policymaking grounded in data, law, and lived experience. If we are truly committed to equity and excellence in special education, we must begin by listening to the families and professionals on the front lines—not marginalizing them through administrative overreach and budget-driven policymaking.

Please see my detailed list of failures and concerns section by section of the raised bills more fully below:

Failures and Concerns, Section by Section

Section 1 – *Definitions and Scope Expansion*
This section introduces definitions that expand oversight to entities like Regional Education Service Centers (RESCs), private transportation providers, and other contractors. However, it omits critical provider categories, such as private speech-language pathologists (SLPs), occupational therapists (OTs), and Board-Certified Behavior Analysts (BCBAs) contracted directly by school districts. The definition of "unilateral placement" is inconsistent with federal law under 20 U.S.C. §1412(a)(10)(C)(ii), narrowing parents' reimbursement rights beyond what IDEA permits. The language must be revised to align with federal standards and preserve lawful parental recourse.

Section 2 – *Rate-Setting Authority Delegated to OPM*
The Office of Policy and Management (OPM), an agency with no educational expertise, is inappropriately tasked with designing a universal rate-setting system for special education services. This introduces an economically motivated pricing mechanism without pedagogical foundation or stakeholder appeal rights. OPM's mandate to develop this plan within six months is both unrealistic and reckless.

Section 3 – *Implementation Timeline and Enforcement of Rate Schedule*
The bill requires full implementation of individualized service rates by July 1, 2026. Providers exceeding the rate lose eligibility for student placements. This draconian penalty will destabilize the provider ecosystem. The absence of regional cost adjustments and operational flexibility all but ensures closures of high-quality providers, leaving students without placements.

Section 4 – *Rate Adjustment Restrictions*
Restricting mid-year rate increases to only those approved by OPM overlooks common educational scenarios, such as changes to a student's IEP requiring more intensive services. Rate decisions should not rest with a fiscal agency detached from educational needs and compliance responsibilities under IDEA.

Section 5 – *Limitation on PPT Placements to Approved Schools Only*
This provision unlawfully curtails a PPT's ability to consider unapproved placements, violating the Supreme Court's decision in Florence County v. Carter. It creates unnecessary litigation risk for districts and parents and removes critical flexibility needed to serve students with highly specialized needs.

Section 6 – *Redefinition of 'Reasonable Cost'*
By tying the definition of "reasonable cost" to the state-imposed rate schedule, this section overrides recent court decisions recognizing actual costs. It targets underfunded but effective programs, especially in charter schools serving historically marginalized populations. The result is discriminatory underfunding of high-need placements.

Section 7 – *Excess Cost Reimbursement Threshold Adjustments*
The language illogically limits reimbursement for in-district programs only if a student was previously outplaced and no longer supported by a third-party contractor. This punishes innovation and flexibility in staffing and ignores that many successful in-district programs are operated in partnership with private experts.

Sections 8-10 – *Grant Provisions with Severe Restrictions*
While the concept of offset and transportation grants is supportable, restrictions on using funds for contracted services are impractical and punitive. Many districts must contract for services due to staffing shortages, and these limitations undercut the effectiveness of the grants.

Sections 11-14 – *Transportation and Facilities Restrictions*
Requiring coordinated transportation routes under DOT (not CSDE) is misguided. Transportation decisions for students with disabilities must be driven by educational, not logistical, considerations. Likewise, restricting capital investments to buildings serving general education students undermines the need for appropriate and separate facilities when warranted.

Sections 15-20 – *Expanded Reporting and Licensure Authority*
The bill expands reporting burdens without clear purpose and transfers licensing control from CSDE to OPM. This power shift removes oversight from the agency with the legal duty to ensure FAPE and IDEA compliance, leading to confusion and risk of inconsistent enforcement.

Sections 21-24 – *Audit Expansion and Notice Mandates*
Audits are essential, but must be targeted, funded, and expertise-driven. Notification rules around staffing changes should apply to all settings—public and private alike. Provisions restricting PPT initiation by recipient providers and imposing undefined "more appropriate" language create confusion and new litigation risk.

Sections 25-27 – *Model Contracts and Outplacement Data Reporting*
These provisions could promote transparency but must be revised to ensure FERPA compliance and prevent misuse of data. Model contracts should apply equally to RESCs and APSEPs. Nondisclosure agreements in cost-sharing settlements should be expressly limited to promote public accountability.

Sections 28-30 – *Behavioral Interventions and Program Evaluation*
These provisions align with best practices in behavioral intervention, but additional specificity is required to avoid misuse. The inclusion of Ross Greene's methodology is promising but must be implemented carefully with educator training and CSDE oversight.

Sections 31-32 – *BERGIN Commission Expansion and Moratorium on Approvals*
Adding six new mandates to a dormant and under-resourced commission is ineffective policymaking. Worse, a two-year moratorium on approving new special education providers—during a statewide placement crisis—is both irresponsible and harmful to students with the highest needs.

Sections 33-36 – *Training and Credentialing Reforms*
Support for professional development is warranted, but implementation must be accompanied by clear funding, practical timelines, and support for micro-credentialing. Differentiated roles for paraeducators must be addressed.

Sections 37-39 – *CT-SEDS and Workload Studies*
A full-scale review of CT-SEDS is overdue. However, requiring volunteer commissions to lead technical system audits and workload analyses without resources or statutory authority is unworkable. Independent consultants with system access and educator input are essential.

Sections 40-44 – *Eligibility and Procedural Changes*
Expanding the use of the developmental delay eligibility category is beneficial. However, shifting the burden of proof in due process, limiting hearing durations, and interfering with hearing officer discretion are dangerous intrusions on legal rights and contradict longstanding state and federal law.

Sections 45-55 – *Miscellaneous Provisions*
Most of these provisions are duplicative, unfunded, or symbolic. Funding special education through novelty license plates is particularly offensive to families already battling under-resourced systems. Others, such as the family guide and ombudsperson, require clarity on scope and coordination with existing protections.

Final Assessment:
This legislative proposal, if enacted, would set off a cascade of harm—financial, educational, and legal—for thousands of students with disabilities and their families.

I urge the Committee to **VOTE NO** on Raised Bills 7277 and 1561 and instead work with families, educators, and legal experts to craft thoughtful, inclusive reforms grounded in federal compliance and student need.

Respectfully submitted,

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