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## OLR Bill Analysis

### sHB 7219

#### ***AN ACT PROTECTING 504 PLAN ACCOMMODATIONS FOR STUDENTS IN CONNECTICUT.***

#### **SUMMARY**

In effect, this bill creates state level protections for students with disabilities that generally mirror those under the federal Section 504 law and regulations (see BACKGROUND). These protections apply in addition to state special education law, which conforms to the federal Individuals with Disabilities Education Act (IDEA). Existing state law, unchanged by the bill, gives students an equal opportunity to participate in public school activities, programs, and courses of study without discrimination based on disability (CGS § 10-15c).

By incorporating requirements from Section 504 and related regulations (hereafter Section 504) into state law, the bill adds provisions to state law that require local and regional school boards to provide students with disabilities, as defined in the bill, with a free appropriate public education (FAPE) that meets their needs as adequately as the needs of students without disabilities are met. It also creates related protections.

As is the case with Section 504, the bill's provisions overlap to some extent with other existing requirements, including IDEA and corresponding state special education laws. However, the bill, like Section 504, applies to a wider scope of students with disabilities than IDEA (see BACKGROUND).

The bill specifies that a school board's obligation to comply with the bill's requirements is not negated by any other state or local law or other requirement that, based on disability, imposes prohibitions or limits on the eligibility of students with disabilities to receive services. (Section 504 contains a corresponding provision on compliance regardless of

inconsistent state laws.)

EFFECTIVE DATE: Upon passage

### **STUDENT WITH A DISABILITY, DEFINED**

The bill adopts the same disability-related definitions that apply under Section 504. Specifically, under the bill, a “student with a disability” is one who:

1. has a physical or mental impairment that substantially limits at least one major life activity (e.g., self-care, walking, speaking, and learning);
2. has a history of such an impairment that substantially limits a major life activity, or was misclassified as having one (i.e. “has a record of an impairment”); or
3. is regarded as having an impairment.

The bill further defines “physical or mental impairment” as any (1) physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting at least one body system (e.g., neurological, musculoskeletal, and respiratory) or (2) mental or psychological disorder (e.g., intellectual disability or specific learning disability).

Under the bill, a student is “regarded as having an impairment” if he or she has (1) an impairment that does not substantially limit a major life activity, but is treated by a school board as though it does; (2) an impairment that does substantially limit a major life activity, but only because of others’ attitudes toward the impairment; or (3) no impairment, but is treated by a school board as though he or she has one.

### **DISCRIMINATORY ACTIONS BROADLY PROHIBITED**

Like Section 504, the bill protects students with disabilities from discrimination, on the basis of the disability, under any program or activity offered by a school board and prohibits denying these students the benefits of the program or activity or excluding their participation.

The bill requires school boards to annually submit an assurance, on a form the education commissioner specifies, that their programs and activities will be operated in compliance with the bill. (Under federal Section 504 regulations, school boards and the State Department of Education (SDE) must submit similar assurances in connection with receipt of federal funds.)

Under the bill, each school board must take appropriate and ongoing steps to notify parents and guardians of enrolled students that it does not discriminate based on disability in admission or access to, or treatment in, its programs or activities. The notification must identify the designated compliance coordinator (see below) and may be given by posting information on the school board's website, in student handbooks, and in parent handbooks or manuals.

***Provision of Aid, Benefits, and Services***

The bill specifically prohibits school boards, when providing aid, benefits, or services, from doing the following on the basis of disability:

1. denying a student with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
2. giving a student with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that given to students without a disability;
3. giving a student with a disability an aid, benefit, or service that is not as effective as that given to students without disabilities;
4. giving students with disabilities different or separate aid, benefits, or services, unless doing so is necessary to give the students aid, benefits, or services that are as effective as those given to students without disabilities;
5. aiding or perpetuating discrimination against a student with a disability by significantly assisting an agency, organization, or person that discriminates on the basis of disability; and

6. otherwise limiting a student with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by students without a disability receiving an aid, benefit, or service.

Under the bill, these prohibitions apply to actions the board takes directly and those taken through contractual, licensing, or other arrangements.

The bill specifies that even if a school board provides separate or different aid, benefits, or services that meet the bill's requirements, it may not deny a student with disabilities the opportunity to participate in the aid, benefits, and services that are not separate or different.

#### ***Discriminatory Criteria or Administrative Methods***

The bill prohibits school boards from directly or through contractual or other arrangements using criteria or methods of administration that:

1. effectively subject students with disabilities to discrimination on the basis of disability;
2. defeat or substantially impair accomplishment of the board's program or activity objectives with regard to students with disabilities, whether intentionally or in effect; or
3. perpetuate another school board's discrimination, if both boards are subject to common administrative control.

#### ***Site Selection for Facilities, Generally***

Under the bill, a school board may not select a facility location or site that (1) effectively excludes students with disabilities from, denies them the benefits of, or otherwise subjects them to discrimination under a program or activity or (2) defeats or substantially impairs accomplishment of the board's program or activity with regard to students with disabilities, whether intentionally or in effect.

Under the bill, a "facility" is all or a portion of a building, structure, equipment, road, walk, parking lot, or other real or personal property or interest in such property.

**Exceptions and Limitations**

***Equally Effective Standard.*** As Section 504 does, the bill specifies that aids, benefits, and services do not need to produce identical results or achievement for students with and without disabilities to be considered equally effective. Instead, they must give students with disabilities equal opportunity to get the same result, gain the same benefit, or reach the same achievement level in the most integrated setting appropriate to the student's needs.

***Exclusion of Certain Students Permitted.*** The bill specifies that it does not prohibit the following:

1. excluding students who do not have a disability from aid, benefits, or services that are limited to students with disabilities pursuant to IDEA, the Americans with Disabilities Act (ADA), or state law or
2. excluding a specific class of students with disabilities from aid, benefits, or services limited to a different class of students with disabilities under those laws.

**REQUIREMENT TO PROVIDE FAPE**

As under Section 504, school boards must provide FAPE to each student with a disability within the board's jurisdiction, regardless of the disability's nature or severity. Under the bill, FAPE is the provision of regular or special education and related services that (1) is designed to meet individual needs of students with disabilities as adequately as the needs of students without disabilities are met and (2) adheres to procedures meeting the bill's requirements (e.g., on selecting the educational setting, see below).

FAPE under Section 504 and the bill is different than under IDEA (see BACKGROUND). But the bill specifies that implementing an individualized education program (IEP) under IDEA and the corresponding state law meets the bill's requirements.

The bill allows school boards to place or refer students with disabilities for aid, benefits, or services it does not operate in order to

fulfill its obligations under the bill, but the board remains responsible for ensuring the bill's requirements are met.

### ***Identifying Eligible Students***

The bill requires school boards that operate preschool, elementary, secondary, and adult education programs to annually make an effort to identify and locate every student with a disability residing in the board's jurisdiction who is not receiving a public education and take appropriate steps to notify the students and their parents or guardians of the board's education-specific duties under the bill.

### ***Free Education***

Under the bill, school boards must provide FAPE without cost to students or their parents or guardians, either directly through services they provide or by paying the cost of services provided by another entity. However, they may charge fees to students with disabilities that are also charged to those without them. The bill specifies that it does not relieve an insurer or similar third party from an otherwise valid obligation to pay for services for a student with a disability. Boards may use funds from any public or private agency to meet their obligations.

School boards that refer students with disabilities to programs or services they do not operate must ensure adequate transportation for the students at no greater cost to the parent or student than they would incur if the board operated the program. If a residential placement is necessary to provide FAPE, the placement, including nonmedical care and room and board, must be provided at no cost to the student or their parents or guardians.

The bill specifies, however, that if a school board has made FAPE available to a student with a disability but his or her parent or guardian places the student in a private school, the school board is not required to pay for the private school. Disputes over the provision of FAPE or of financial responsibility are subject to the due process provisions (see below).

**EVALUATION**

Under the bill (as under Section 504), school boards that operate a public elementary or secondary education program or activity must evaluate students who may need special education because of a disability before taking any action related to placement. The boards must establish standards to ensure that tests and evaluation materials they use:

1. are valid for the specific purpose for which they are used and administered by trained personnel in conformance with the instructions provided by their producer;
2. include ones tailored to assess specific areas of educational need and not just ones designed to provide a single general intelligence quotient;
3. are selected and administered so results accurately reflect the student's aptitude, achievement level, or other measure, rather than reflecting any impaired sensory, manual, or speaking skills (except where such skills are the factors being measured).

School boards must also establish procedures for periodically reevaluating students who have been given special education and related services, which may include a reevaluation procedure consistent with IDEA.

**EDUCATIONAL SETTING**

Under the bill (as under Section 504), school boards must educate, or provide for education of, each student with a disability with their nondisabled peers to the maximum extent appropriate to the needs of the student with a disability. School boards must place a student with a disability in the general education classroom unless they demonstrate that they cannot effectively educate the student by using accommodations and other supplementary aids in the general education environment.

Additionally, school boards must ensure that students with disabilities can participate in nonacademic and extracurricular activities

it provides (e.g., meals and recess) with their nondisabled peers to the maximum extent appropriate to the needs of the student with a disability.

### ***Placement Procedures***

When interpreting evaluations and making placement decisions, the bill requires school boards to:

1. use information from a variety of sources (e.g., aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior);
2. establish procedures to ensure documentation and careful consideration of all the sources;
3. ensure that the placement decision is made by a group that includes people knowledgeable about the student, the evaluation data, and the placement options; and
4. ensure that the placement complies with the requirement to place students in the general education environment as much as possible.

If a school board places a student with a disability in a setting other than the general education environment, it must take into account the location and the proximity to the student's home.

If a school board operates a facility that is identifiable as being for students with disabilities, it must ensure that the facility and available services and activities are comparable to the board's other facilities, services, and activities.

### **NONACADEMIC SERVICES**

The bill, like Section 504, requires school boards to provide nonacademic and extracurricular services and activities in way that gives students with disabilities an equal opportunity to participate, including counseling services, recreational activities, and referrals to assistance agencies, among other things.



If a school board offers personal, academic, or vocational counseling, guidance, or placement to students, it must ensure that students with disabilities are not counseled toward more restrictive objectives than students without disabilities.

Under the bill, school boards may not discriminate on the basis of disability when providing physical education courses, athletics, and similar aid, benefits, or services and must afford students with disabilities an equal opportunity for participation. School boards may offer students with disabilities physical education and athletics that are separate or different from those for nondisabled students, but only if the separation complies with the bill's placement requirements and a student with a disability is not denied the opportunity to compete or participate on teams and in courses that are not different.

### **PRESCHOOL, CHILD CARE, AND ADULT EDUCATION**

As under Section 504, the bill specifies that school boards providing preschool, child care services, or adult education may not exclude students with disabilities based on their disability and must take into account the needs of students with disabilities when determining the aid, benefits, or services they will provide.

### **COMPLIANCE COORDINATOR AND COMPLAINT PROCEDURE**

As under Section 504, the bill requires school boards to designate at least one person to coordinate the board's efforts to comply with the bill's provisions. Each board must adopt due process standards that provide for prompt and equitable resolution of complaints alleging violations of the bill's requirements.

### **PROCEDURAL SAFEGUARDS**

Under the bill, as under Section 504, school boards with elementary or secondary education programs must establish and implement certain procedural safeguards pertaining to the identification, evaluation, and placement of students who need or may need special instruction or related services. The safeguards must include (1) notice requirements, (2) an opportunity for parents or guardians to examine records, (3) an impartial hearing with the opportunity for parent or guardian

participation and representation by counsel, and (4) a review procedure.

Compliance may include, but is not limited to, using the procedural safeguards required under IDEA.

### **REMEDIAL ACTION ORDERED BY SDE & VOLUNTARY ACTION**

The bill creates an enforcement framework that is similar to the one the federal Department of Education's Assistant Secretary for Civil Rights uses to enforce Section 504. Under the bill, if the SDE commissioner finds that a school board discriminated against students with disabilities on the basis of disability in violation of the bill, the board must take remedial action that the commissioner deems appropriate to overcome the discrimination's effects. The commissioner may require the board to take remedial action, if necessary, with respect to students who (1) no longer participate in the board's programs or activities but were there when the discrimination occurred or (2) would have been participants had the discrimination not happened.

Under the bill, if another board of education exercises control over the school board in violation, the commissioner may require either or both boards to take remedial action.

Like Section 504, the bill also specifically allows school boards to take voluntary actions to overcome the effects of conditions that resulted in the limited participation of students with disabilities in the board's programs or activities.

### **BACKGROUND**

#### ***IDEA Compared to Section 504***

IDEA is the main federal law governing special education (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 et seq.). It authorizes grants to states and school districts and attaches a series of conditions to funding, which states agree to adhere to by accepting funding. IDEA guarantees students with qualifying disabilities the right to FAPE that is tailored to their unique needs and implemented under a planning document called an IEP. It also requires school districts to identify and evaluate students who may need special education, educate students with disabilities with

their nondisabled peers to the maximum extent possible, and follow certain procedural safeguards, among other things.

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794; 34 C.F.R. § 104.1 et seq.) protects individuals with disabilities from discrimination in programs and activities that receive federal financial assistance, including public elementary and secondary schools and some private schools. This law and the plans commonly used to implement it (504 plans) are different from IDEA and IEPs. While IDEA guarantees individually tailored education services for students with disabilities (i.e. special education), Section 504 is a broad civil rights law that aims to eliminate barriers to a student's access to FAPE by providing reasonable accommodations.

### ***Definition of Disability Under IDEA***

IDEA's definition of disability is categorical and education-specific. To be a "child with a disability" under IDEA (and thus qualify for special education services), a child must (1) have a disability that falls under one of the enumerated categories and (2) need special education and related services because of the disability. The categories are: autism, deaf-blindness, hearing impairment (including deafness), intellectual disability, developmental delay (for certain ages), orthopedic impairment, serious emotional disturbance, specific learning disability, speech or language impairment, traumatic brain injury, vision impairment, multiple disabilities, and other health impairment (20 U.S.C. § 1401 (3); 34 C.F.R. § 300.8(c)).

### ***Planning for FAPE Under IDEA and Section 504***

The term "FAPE" is used in the context of both IDEA and Section 504.

FAPE under Section 504 is focused on discrimination protections and equal access to educational opportunities for students with disabilities. By contrast, FAPE under IDEA is an entitlement, giving qualifying students with disabilities the right to individualized instruction and related services tailored specifically to their needs and to ensure an educational benefit.

While IDEA involves special education and related services provided through an IEP, in practice, FAPE under Section 504 typically involves providing reasonable accommodations and modifications for students with disabilities in the general education classroom. Generally, Section 504 is applied to ensure that students who may not need an IEP still receive the supports they require to fully participate in school. Unlike under IDEA, Section 504 does not require schools to write down the accommodations or modifications it will provide students in a formal plan; however, in practice, Connecticut schools develop “504 plans” to ensure compliance with the law.

**COMMITTEE ACTION**

Education Committee

Joint Favorable Substitute

Yea     42     Nay     0     (03/28/2025)