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Advocating for students and teachers

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WRITTEN TESTIMONY OF

ADRIENNE R. DELUCCA, LEGAL COUNSEL

CONNECTICUT EDUCATION ASSOCIATION

BEFORE THE

COMMITTEE ON CHILDREN

Re:

HB 5243 AN ACT CONCERNING ADULT SEXUAL MISCONDUCT

March 1, 2022

Representative Linehan, Senator Anwar and members of this esteemed committee. My name is Adrienne DeLucca, and I am Legal Counsel to the Connecticut Education Association (CEA), proudly representing thousands of public school teachers across our state. Unfortunately, my schedule does not permit me to speak in person on this bill; but in the alternative, I submit this written testimony for your consideration.

HB 5243 is a complex bill which affects many different aspects of this important topic.

Sections 1 and 3 – CEA has no objection to developing and administering the Connecticut School Health Survey specifically designed to identify a victim of adult sexual misconduct in grades nine to twelve. However, we do ask committee members to consider the following:

- Parents can exclude their child from the survey, potentially unwittingly shielding information of sexual misconduct, or worse, knowingly restricting the sharing of information about sexual misconduct in the home. Should an opt-out be permitted if it is likely to result in unrepresentative or misleading results?

- The survey is required to be administered anonymously. We recognize that the intent of this provision is to reduce apprehension by students to respond to questions. However, what is to be done if a victim anonymously discloses an incident of sexual misconduct, other than the training provision in Section 4? It seems incongruous that reporting of such serious abuses would be met solely with training.

Section 4 and 5 – This section provides that, "if the ***results"*** of the survey "reveal that a student in the high school in which such survey was administered has been the victim of a sexual assault or misconduct by an adult", then all teachers, administrators and other staff must then be trained by the Department of Children and Families (DCF) on how to support such students. The sections also require "bystander training."

- This is confusing and leaves open several critical questions as to what specific "results" will be disclosed, to whom will those results be disclosed, and if teachers and other school staff do not know the specific student, how will the staff know to whom to provide the contemplated support?

- Moreover, the language does not provide any guidance nor articulate what the expectation will be for an educator who is provided with this sensitive information.

- The term "bystander training" is not defined and open to several interpretations.

CEA believes that the proposed training should not be tied to this or any other survey, but rather be incorporated into overall professional development.

Section 7 – This section concerns a change to the statute of limitations for prosecutions of a Mandated Reporter's failure to report suspected abuse or neglect which holds a penalty of either a Class A Misdemeanor or a Class E Felony. This bill has the effect of changing the statute of limitations of a felony crime from one year to three through a circuitous route of changing a DCF statute namely, C.G.S. 17a-101a(b)(1).

It should also be noted that the DCF does not make a determination (i.e., substantiation) of a failure to report, but rather submits the name of an individual suspected by the DCF of having failed to report to the Office of the Chief State's Attorney for investigation and potential criminal prosecution. This change would undoubtedly affect a teacher's right to continued employment by forcing them to wait up to three years for the State just to decide whether an investigation would be commenced, let alone if criminal charges would be brought. This change is unnecessary and extremely punitive.

Section 8 - This section addresses the powers of the State Department of Education (SDE) to revoke or suspend a teaching certification pursuant to C.G.S. 10-145b. This addition is superfluous and unnecessary for a variety of reasons. First and foremost, the SDE has always had the power to revoke or suspend certifications for substantiations of abuse and neglect. Second, DCF, by statute, must immediately notify SDE when an investigation is commenced and subsequently notify SDE of the outcome of those investigations. The proposed new language is therefore not necessary.

Moreover, it should be noted that subsection (D) of C.G.S. 10-145b makes it clear that to revoke or suspend an individual, he/she must be "convicted in a court of law of a crime involving moral turpitude," which is the highest level of legal burdens. Here the proposed language adding subsection (E) merely states that revocation or suspension can be effectuated by SDE pursuant to a "substantiated" allegation.

Having represented individuals who have had "substantiated" findings reversed by DCF in the agency's appeals process, this section risks ending innocent people's careers without due process. SDE has always permitted the individual to exhaust appeals before acting to revoke or suspend an individual's license.

In fact, CEA is currently seeking legislation that requires local and regional boards of education to permit individuals who are substantiated for abuse or neglect to pursue the appeal rights they are entitled to pursuant to C.G.S. 17a-101k before suffering any adverse employment action, namely termination. CEA is proposing a reasonable time frame of ninety days to pursue such appeals before DCF only. CEA has never

taken an appeal beyond the administrative hearing process outlined in 17a-101k and is not asking for any right to appeal a DCF administrative decision to court in its proposed legislation.

In your consideration of substitute language for HB 5243, we ask that your proposed change to 17a-101k in lines 135-136, which currently is written as *"(E) the holder has had an allegation of abuse or neglect substantiated pursuant to 135 section 17a-101g."* be amended to read ***"(E) the holder has an allegation of abuse or neglect, which has been upheld after an appeal conducted in accordance with section 17a-101k."***

We believe that this would provide appropriate due process within the DCF process.

Sections 10 and 11 – Protocol and Checklist
While CEA acknowledges that a local or regional board has a right to do its own internal investigations, the language of this amendment appears to delegate the investigatory process to a district, and mandate that a local investigation occur whenever an allegation is made. It is unclear as to whether or not a board of education would, at its own discretion, be able take ***exclusive jurisdiction*** regarding an allegation of abuse or neglect. This is contrary to the DCF reporting statutes and C.G.S. 17a-101h which mandates that investigations shall be coordinated in "order to minimize the number of interviews of any child and share information with other persons authorized to conduct an investigation child abuse or neglect, as appropriate."

We recommend that the mandatory language in Section 11, lines 180-183 be removed so that local districts retain the ability to comply with C.G.S. 17a-101h and retain the ability to permit DCF to take jurisdiction in instances when concurrent and potentially duplicative investigations are not necessary.

We thank committee members for their consideration of the concerns we raise. Thank you.