

# Dual Teaching Ban

## Legal Opinion

September 2022

# Dual Instruction is Prohibited Without Exception

Dual instruction is the process of attempting to teach: a) to an in-person class of students, and, b) to a remote-based class of students through video transmitted to a receiving source such as a computer, tablet, or smart phone, c) at the same time. It was implemented in Connecticut schools without study under emergency circumstances during the COVID pandemic.

This practice has been found to be harmful and disengaging for students, and disruptive and frustrating for teachers. A study of dual teaching in nine states by Lora Bartlett at the University of California, Santa Barbara, determined that it led to multiple technology breakdowns, absent and disengaged students, and “chaos” as to learning, as was stated in testimony before the Education Committee by CEA Executive Director Donald Williams. Dual instruction was consequently banned without exception by the Connecticut General Assembly, and signed into law by the governor in 2022.

## I. Statutory Interpretation Principles Under Connecticut Law

Connecticut courts are guided by well-defined principles of statutory interpretation in determining legislative intent. The court’s “fundamental objective is to ascertain and give effect to the apparent intent of the legislature.” *Edelstein v. Dept. of Public Health & Addiction Services*, 240 Conn. 658, 664, 692 A.2d 803 (1997), quoting *State v. Metz*, 230 Conn. 400, 409, 645 A.2d 965 (1994). Moreover, principles of statutory construction require the court to construe a statute in a manner that will not frustrate its intended purpose or lead to an absurd result. *Turner v. Turner*, 219 Conn. 703, 712, 595 A.2d 297 (1991).

The court “must avoid a construction that fails to attain a rational and sensible result that bears directly on the purpose the legislature sought to achieve.” *Id.*, at 713, 595 A.2d 297.

Only when confronted with an allegation of ambiguity to the plain meaning of the statute by a challenging party might the court look to the statute’s “legislative history, its language, the purpose it is to serve, and the circumstances surrounding its enactment” to determine the legislative intent. *Verrastro v. Sivertsen*, 188 Conn. 213, 221, 448 A.2d 1344 (1982).” (Internal quotation marks omitted.) *Nationwide Mutual Ins. Co. v. Pasion*, 219 Conn. 764, 769, 594 A.2d 468 (1991). Notably, “where legislative intent is clear, there is no room for statutory construction” by a contesting party. (Internal quotation marks omitted.) *Kelemen v. Rimrock Corp.*, 207 Conn. 599, 606, 542 A.2d 720 (1988). “[W]hen the language of a statute is plain and unambiguous, we need look no further than

the words themselves because we assume that the language expresses the legislature’s intent. *State v. White*, 204 Conn. 410, 421, 528 A.2d 811 (1987); *Beloff v. Progressive Casualty Ins. Co.*, 203 Conn. 45, 54–55, 523 A.2d 477 (1987).” *American Universal Ins. Co. v. DelGreco*, 205 Conn. 178, 193, 530 A.2d 171 (1987). *Gen. Acc. Ins. Co. of Am. v. Powers, Bolles, Houlihan & Hartline, Inc.*, 50 Conn. App. 701, 708–09, 719 A.2d 77, 81 (1998), *aff’d*, 251 Conn. 56, 738 A.2d 168 (1999).

“[The] legislative intent is to be determined by an analysis of the language actually used in the legislation”; *Vaillancourt v. New Britain Machine/Litton*, 224 Conn. 382, 391, 618 A.2d 1340 (1993); it is found not in what the legislature perhaps meant to say, “but in the meaning of what it did say.” *Dana–Robin Corp. v. Common Council*, 166 Conn. 207, 221, 348 A.2d 560 (1974). Further, in considering statutory construction including legislative intent, we must recognize that “the legislature is presumed to have intended a reasonable, just and constitutional result.” *Sanzone v. Board of Police Commissioners*, 219 Conn. 179, 187, 592 A.2d 912 (1991). *In re Thomas J.*, 77 Conn. App. 1, 6, 822 A.2d 323, 328 (2003).

In SB 1/Public Act 22-80, the legislature passed statutory language that “prohibits the provision of dual instruction as part of remote learning.” P.A. 22-80, Section 25 (d) and (d).

The statutory language in P.A. 22-80 is clear and contains no exceptions. Even if there were some ambiguity in the statutory language, the legislative history is also clear and unambiguous as to the prohibition—without exception.

## II. Legislative History

### a. Transcripts of Senate and House on SB1

In the April 28th Senate Transcript, Sen. McCrory (Co-Chair, Education Committee) summarized the bill, including a description of dual instruction, and then clarified intent in an exchange with Sen. Berthel (Sen. Ranking Member) (bolded for emphasis):

SENATOR MCCRORY (2<sup>ND</sup>):

...

*Section 25 defines dual instruction excluded from existing remote learning statute and expands the statute and guidelines for K-12. Basically what we're looking here, we know when we hit this crisis with this COVID-19, we had to fix things on the run. We was building the plane as we was flying. And what we found that educators were teaching two different ways at the same time. It was virtually impossible. You had no more of them being recorded virtually and then you had students in the classroom. It doesn't work, folks. It doesn't work that way. It has to be either or, and that's basically what we're saying.*

*Again, the best form of educating our children is in the classroom. However, because of the crisis, we realized we had to go virtual. So what we're saying here is that we want to make sure that we put our children in the classroom because that's the best location for them to be educated. **Try and do it two ways doesn't work for anyone.***

SENATOR BERTHEL (32<sup>ND</sup>):

*Thank you, Madam President. And I appreciate again, the clarification there, I would agree that there are many fine institutions of higher education throughout our country. And as much as I would very much like to see our students that are working here, studying here.*

*I think it's okay that we've expanded this beyond the borders of our state and then with respect to minority teacher recruitment. I think I've stood here and co-sponsored Bills with the good Chair in the past to address our concern and our need to hire more minority teachers into our public schools.*

*And I think that sections 16 through 22 are a wonderful change that will if it's done correctly, administered correctly, carried out correctly will actually probably*

*result in us having not having to bring forth new initiatives every single year before this chamber.*

*We actually will now be authorizing and empowering the task force to do the work that's necessary to attract minority teachers to our beautiful state and to educate our children, which is really a great move that we're making here.*

*So section 25—sorry, I lost my spot for a moment.*

*Section 25, I think this is probably the issue with respect to dual instruction that we heard the most from teachers on through advocacy and emails and phone calls and some limited visits with us.*

*And I'm wondering if the good Chair might help anyone who's listening, understand what we actually mean by dual instruction. I know what it means. I actually am in a classroom myself where I am doing some dual instruction and understand the challenges of doing that.*

*But through you, Madam President, if the Chair could help us to explain why we are eliminating, if you will, or prohibiting dual instruction and maybe provide some understanding as to what that is. Through you.*

THE CHAIR:

*Thank you. Senator McCrory.*

SENATOR MCCRORY (2<sup>ND</sup>):

...

*And in regards to the dual language.*

*So, I mean, not dual language, dual teaching what happened here is the dual instruction. I'm sorry. I could utilize the phrases.*

*Dual, what we found at, during the COVID crisis, we were, like I said earlier, we were building the plan out flying, and we're asking, we were trying to figure out the best way to provide instruction for our children. The fastest and the best way and the cleanest way.*

*Clearly we saw there was a differentiation for school districts. Some districts were able to get up and get online and go within a matter of week. And some took that much longer.*

However, reality is once everyone got up and running, now you have an individual instructor who is basically being that's online for the students who are at home, giving them instruction, which is something we have never done before.

And then you also have some students that were in the classroom at the same time. So you have one teacher instructing children before them, maybe 10 or 15 children before them. And you have another 10 or 12 students online, which is virtually impossible for anyone to do.

It just can't happen. And I'm a great educator. And if I was in that classroom, I wouldn't be able to do that. I couldn't serve two masters. I can't service the children in front of me and at the same time provide a quality education for those at home.

So what we wanna do, we want to eliminate that. And we wanna go into the instruction that we all know works better, children in the classroom. With understanding that if something like this comes up again.

We have the ability, the capability, the online instruction, the curriculum to serve somebody at home. So no longer we gonna do two at a time. We'll have to select one or the other. Through you, Madam President.

THE CHAIR:

Thank you, Senator McCrory. Senator Berthel.

SENATOR BERTHEL (32<sup>ND</sup>):

Thank you, Madam President, and Thank you, to the good Chair for the great explanation as to why that was an issue and the concerns that came out. And I think that we're able to respect what our teachers have told us as a result of the two years of working in a COVID environment.

And I think that this really comes down to, and why it's so important is that our teachers truly want to deliver the best educational experience that they can.

In the May 3, 2022 House transcript, Rep. McCarty (Education Committee House Ranking Member) and Rep. Sanchez (Co-Chair) have a dialogue that reinforces intent.

REP. MCCARTY (38<sup>TH</sup>):

...

But one provision in this Bill that I think we need to highlight again, is that we heard repeatedly throughout the pandemic from our teachers, about the difficulty with remote learning and teaching, both in the classroom, and on a virtual platform at the same time. And so, this Bill clarifies that when remote learning – when the standards are finished, this will also be under the guidance of the Department of Education, that we would not – that provision would be stricken, **that teachers will no longer have to do the dual teaching.** Is that correct? Through you, Mr. Speaker.

REP. SANCHEZ (25<sup>TH</sup>):

Through you, Mr. Speaker. **That is correct.** We've heard from teachers, CEA, IFT about the dual learning. It's difficult when you're teaching students remotely and in the classroom. So you're you are absolutely correct, Representative. Through you, Mr. Speaker.

These transcripts demonstrate that the legislative intent of both the House and Senate when passing the Public Act was to eliminate dual instruction in all circumstances, not just some. Questions were posed that addressed this squarely. There is clear discussion about the detrimental aspects of dual teaching and the need and desire to eliminate it. There is no dialogue of exceptions or carve-outs to the Act, which was later codified.

#### b. Testimony on SB1

In the 2022 session, CEA Executive Director Donald Williams provided testimony on the issue of Dual Instruction, its harmful effects, and the request for including a ban on its practice as an amendment to SB1 (See attached). CEA President Kate Dias testified on it in HB 5287 AAC Remote Learning in Connecticut (See attached). During the 2021 legislative session, there was discussion prohibiting dual instruction in hearings in two committees—Education, and Children (See attached). All testimony stood for the position that dual instruction in any form should be eliminated.

### III. Statute & OLR Interpretation

The statute at issue is C.G.S. Section 10-4w, recently amended by Public Act No. 22-80 and known during the legislative session as Senate Bill No. 1. It defined dual instruction to mean “simultaneous instruction by a teacher to students in-person in the classroom and students engaged in remote learning.” More importantly, it strictly **prohibits dual instruction**.

The Office of Legislative Research (OLR) provided the public act summary of the Act as follows:

#### § 25 — REMOTE LEARNING

*Permits local or regional boards of education to authorize remote learning for students in grades kindergarten to 12 beginning with the 2024–25 school year and requires boards that provide remote learning to prohibit dual instruction.*

*The bill permits local or regional boards of education to authorize remote learning for students in grades kindergarten to 12 beginning with the 2024–25 school year. Under current law, boards have the option to provide remote learning only for grades nine–12 beginning in the 2022–23 school year. Under current law and the bill, the districts must:*

- 1. instruct in compliance with the standards developed by the education commissioner under existing law, and*
- 2. adopt a policy on student attendance requirements during remote learning, which must (a) comply with the commissioner’s guidance and (b) count attendance of any student who spends at least half of the day during virtual instruction engaged in virtual classes, virtual meetings, activities on time-logged electronic systems, and turning in assignments.*

*The bill additionally requires districts to prohibit dual instruction (i.e., the simultaneous instruction by a teacher to students in-person in the classroom and students engaged in remote learning) as part of remote learning.*

*In order to provide remote learning in grades kindergarten to eight, the bill requires school districts to also meet the above requirements.*

*By law and unchanged by the bill, remote learning is defined as instruction by means of one or more Internet-based software platforms as part of a remote learning model.*

*The bill also removes a provision in current law that states the commissioner’s remote learning standards must not be considered regulations.*

It states unequivocally that dual instruction is prohibited. There is no mention in the OLR summary of exceptions or carve-outs, consistent with legislative construction, testimony provided regarding dual instruction, and transcripts of discussions on the House and Senate floor regarding when dual instruction would be allowable.

### IV. Conclusion

It is clear that the legislature meant to prohibit dual instruction in all aspects. It is an inferior delivery system that undermines the education process, and legislators noted that fact.

The plain language of C.G.S. Sec. 10-4w, the legislative history surrounding dual instruction, testimony at public hearings, and discussion on the floors of the House and Senate, all support the legislature’s ban on dual instruction, without exception.