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Dear Committee Members:

My name is James Holtz. For over 25 years I had the pleasure of acting as special education hearing officer for the State of Texas. I resigned last year to represent parents of children with disabilities because there was such a need in this area of practice. I am in strong opposition to the bill proposing to move special education hearings to the State Office of Administrative Hearings (SOAH) simply to address what some perceive, wrongly, as a flawed and biased system. The hearing system in place in Texas, in my opinion, is not broken, but in actuality is the best system in the country. The system works as contemplated by the IDEA and operates in full compliance of the Act. Each hearing officer is highly trained, knowledgeable and fully competent in understanding, analyzing and rendering decisions in the complex area of special education law. In fact, at national seminars, our hearing officers are held in highest esteem, are sought out by other state hearing officers for their guidance and recommendations, and are often presenters at hearing officer training seminars. It would be a great disservice to the citizens of this State to move these hearings to SOAH. Such a move would result in a significant and long-term loss of the knowledge and expertise of these valuable hearing officers.

In 2004, I assisted in revising our State's hearing system to comply with the 2004 Amendments to the IDEA. These amendments added significant complexities to the hearing process and made it much more difficult for the parties, parents in particular, to navigate through the system. The amendments to the IDEA added prehearing prerequisites for hearings, changed the prehearing timelines, and altered the timelines for rendering decisions. What previously had been one standard scheduling order sent to the parties, became four possible scheduling orders depending on which party requested the hearing and the type of issues being addressed. Because of these new complexities to hearing system, we designed a proactive approach to ensure that all participants were provided with the necessary information regarding the hearing procedures applicable to their particular complaint so that they could successfully navigate through the hearing process. Our hearing system became the model used in several other states and our new system has since operated smoothly and in full compliance with the IDEA.

The State's hearing process is not flawed or biased. In fact, most due process hearings are settled by the parties, either in resolution sessions, mediations, or informally. Of the approximately 350-400 hearing requests per year (a significantly low number as compared to other states), only about 40 to 45 actually proceed to hearing.

The perception that parents rarely prevail at hearings fails to take into account the fact that parents are prevailing in the prehearing settlement process. Parent cases that have merit are normally resolved by school districts. Those cases that proceed to hearing are the more difficult and complex cases that the parties have been unable to resolve informally. Of those cases, more than 90% are brought by parents, and in such cases the IDEA places the burden of persuasion on the parents. IDEA presumes that the educational program and placement decisions made by a school district are appropriate. Consequently, in parent-initiated hearings, parents having the daunting task of having to prove, by a preponderance of the evidence, that the programs and/or placements offered by the school district are inappropriate. From a practical standpoint, parents at the outset are at a disadvantage since the primary witnesses knowledgeable about the student's educational program and placement are school district employees such as teachers, aides, educational diagnosticians, etc. As a parent attorney, it is difficult to overcome testimony offered by school district witnesses that their program meets the basic floor of opportunity set forth by the IDEA, that is, that it provides "some" educational benefit to the student. These burdens and problems will not change regardless of what entity or who is selected to hear these cases. Accordingly, moving these hearing to SOAH will not result in changes to the outcome of these cases.

My concern about moving these hearings to SOAH is not that SOAH hearing officers could not ultimately handle these cases. Instead, it is the recognition that there will be a significant long-term learning curve. The new hearing officers assigned by SOAH will not be familiar with the nuances involved in the law and the complexities involved in the hearing process and procedures, the type of which are only gained by extensive experience in this area of the law. These hearings are unlike any currently before SOAH. They are a hybrid of federal law and regulations and state law and regulations and because they are appealable to federal or state district court, they require a detailed decision with findings of fact, conclusions of law, and a discussion section. The IDEA specifically requires that hearing officers "possess the knowledge of, and ability to understand, the provisions of this title (IDEA), Federal and State regulations pertaining to this title, and legal interpretations of this title by Federal and State court...." 20 U.S.C. §1415(f)(3)(A)(ii). As such, if the hearings are moved to SOAH, the prospects of the State being found out-of-compliance by the federal government will be greatly increased, simply due to the initial lack of knowledge and experience by those charged with implementing the hearing system and rendering decisions. If there were some legitimate justification for the move, then this risk might be worth shouldering. However, when our hearing process is not broken, but remains impartial and unbiased and highly competent, there are no legitimate grounds for making such a move.

I can attest as a former hearing officer that the hearing system is fair to all participants, that the decisions rendered are not biased towards one party or the other, and

are not result of or based upon any influence by any Agency or party. Each decision is based solely on the evidence admitted at the hearing. The hearing officers are completely independent, even from the Texas Education Agency. Each is an attorney engaged in the private practice of law who has agreed to forego practicing in education law, so as to remain impartial and unbiased.

The current system is funded solely with federal funds and is very cost effective to the State. The hearing officers receive a fee, much below the prevailing market rate, for the services they render and the State is not charged separately for the overhead costs of conducting these hearing.

In summary, the current hearing system is not biased towards any party, is not flawed, and operates smoothly and effectively in full compliance with federal law. It would be a tragedy to lose the knowledge and expertise that has been accumulated over the years by the current hearing officers, simply because of a wrongful perception of bias. Thank you for your consideration of my point of view.

Respectfully submitted,

James W. Holtz