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Interested Party Testimony on Senate Bill 216
House Education and Career Readiness
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Chair Brenner, Vice Chair Slaby, Ranking Member Fedor and members of the House Education and Career Readiness Committee, thank you for the opportunity to provide written testimony as an interested party in consideration of Senate Bill 216 ("SB 216"). Disability Rights Ohio ("DRO") is designated under federal law as the protection and advocacy system in Ohio with the mission to advocate for the human, civil, and legal rights of people with disabilities. Our work includes helping students with disabilities and their families know their rights and navigate through the educational system. This includes ensuring that schools comply with the Individuals with Disabilities Education Act ("IDEA"), which requires that students with disabilities receive a free appropriate public education ("FAPE") in the least restrictive environment, and with other federal and state laws that ensure against discrimination because of disability. Our work gives DRO a unique and essential perspective on SB 216.

Background

As you know, SB 216 is aimed at deregulating and reforming current school regulations. On the surface this bill does not purport to impact the education of students with disabilities. But some of the provisions inevitably will do so, and a few can potentially put students with disabilities at risk of harm.

This testimony will focus on the six (6) areas that cause us the most concern.

1) Education Assistant Substitutes

SB 216 removes requirements for Educational Assistants, including individuals acting as substitutes. This creates an increased danger of physical and sexual abuse of students with disabilities. These unlicensed individuals would not receive routine background checks and would not be subject to oversight by the Ohio Department of Education and potential discipline by the Office of Professional Conduct. This places students with disabilities at greater risk of abuse and neglect. Aides provide extremely personal health services, often unsupervised. Also, our experience is that a lack of training leads to incorrect use of restraint or seclusion, which places both the student and the assistant at risk for injury. This provision will likely impact students who are most at risk, unable to communicate or defend against inappropriate behavior. Licensure, certification, background checks, and reporting of use of restraint all serve to protect students with disabilities from abuse and denial of educational opportunity.

2) Qualified Educators

The bill removes the requirements that substitutes be qualified teachers. Unqualified teachers are not able to provide the specialized instruction required to address disability-related educational needs. DRO has received numerous complaints regarding the use of long-term substitute teachers serving as intervention specialists, and this provision of SB 216 would potentially worsen the situation.

One example of this is the Maple Heights City School District. In this case, the school district authorized a long-term substitute, with a license in health and physical education, to provide services to students with IEPs that required services be provided by an intervention specialist. This long-term substitute did not meet the qualifications required by the student's IEP, which violated the district's statutory requirements.

The bill provides no time limit on how long these unqualified substitutes could provide services to students with disabilities. Allowing unqualified personnel to serve students for extended periods of time is bad for all kids, but it is worse for students with disabilities because they already lag behind their peers. This provision would conflict with the IDEA's requirement that students with disabilities be served by qualified special education teachers, and would violate that provision of federal law.

3) Increasing Sub-group Reporting Size

The legislation changes the reporting size for student performance data from ten (10) students to (30) students. A larger reporting size (N-size) of students increases the likelihood students with disabilities will be eliminated from reporting requirements. The state and local school districts use this data to make decisions about school improvements. Without accurate data it becomes impossible to quantify the achievement gap between students with disabilities and those without, hampering development of better educational policy for all students.

4) Center-based Teachers

SB 216 requires a minimum of ten (10) hours of services per week be provided for each child served by a center-based teacher. In our experience, this floor will in reality be treated as a ceiling, as schools only meet the minimum service hour requirements. Reducing the minimum number of hours required could lead to a decrease in essential services being provided to students with disabilities. This reduction also conflicts with Ohio's ESSA plan which requires a minimum of 12.5 hours of services to be provided. Any reduction will lead to a lower quality educational system for students with disabilities.

5) Excused Absences

The bill removes the requirement for schools to report excused absences. School absences have long-term impacts on students with disabilities including lower graduation rates. Students with disabilities already miss more school than their peers without disabilities due to disability related concerns, such as need for therapy or medical appointments, disability related school phobia, sleep disorders, and behavioral issues. Students with disabilities are removed from school due to behaviors at a much higher rate than students without disabilities, and discipline of a student with a disability is considered an excused absence if the discipline is an in-school suspension or if services are provided during an out-of-school suspension or expulsion. These unreported excused absences may mask a larger problem with a school's provision of services to students with disabilities, and avoid the requirement for a school to develop an intervention plan to help a student make up for the missed curriculum. This further adds to the achievement gap.

6) Further Statutory Concerns

In addition to the concerns addressed throughout this testimony, two federal compliance issues remain: one, allowing for unqualified personnel to teach special education; and two, confusion from the use of incorrect terminology.

Federal Non-Compliance

SB 216 allows superintendents to employ persons licensed in one subject area to teach in a subject area or grade level for which that person is not licensed. If applied to students with disabilities, the provision conflicts with the federal requirement that students with disabilities be provided qualified special education teachers who are knowledgeable in the content areas in which they teach.

Home Schooled vs. Home-Instructioned

SB 216 uses, incorrectly, the term "home-instructed" instead of "home schooled." This most likely is an oversight. Federal law uses the term "home instruction" to mean students who are being provided educational services by the school district outside of the school setting, usually at the student's home. This section, as written, suggests that a student with a disability who is on home instruction can be charged to participate in the college credit plus program violating the free appropriate public education requirement under federal law. No FAPE requirement attaches to students who are "home schooled." This language issue should be resolved.

Conclusion

Disability Rights Ohio is available to work with the Senate and other interested parties to consider alternatives to the provisions in this bill to meet our common goals of providing

quality educational services to all students, including the provision of FAPE to students with disabilities.

Thank you again for the opportunity to provide testimony as an interested party on SB 216 and to offer vital information the implications the bill could have on students with disabilities. I will be open to taking any of your questions.