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Testimony to Senate Education Committee

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My name is Jeff Miller. I am a policy specialist for Advocacy, Inc., the designated protection and advocacy system for Texans with disabilities. Advocacy, Inc. is a federally funded non-profit organization that advocates for the rights of individuals with disabilities, including students who receive special education services. Thank you for the opportunity to address the committee.

Since its adoption in 1975, the Individuals with Disabilities Act (IDEA), has resulted in hundreds of thousands of students with disabilities receiving a "Free Appropriate Public Education (FAPE)." While there are many schools across the state in which children with disabilities are well educated, implementation of the IDEA in Texas continues to be uneven and unfortunately there are schools that do not provide FAPE to every student entitled to services. Texas is a large and diverse state; however, while this may add to the challenges to appropriately provide special education services to students with disabilities, it cannot be an excuse. All stakeholders must work together to ensure that every school is equipped to provide an appropriate education to every student with a disability. It is imperative, that we focus on the practices and policies that work and use these as models to be replicated in other places.

Despite attempts in past legislative sessions to address issues impacting special education in Texas, there continues to be inequities in the special education and dispute resolution processes. There are inequities in access to information, access to representation, access to funds and the current process favors school districts. While some school districts take the time and resources necessary to provide great special education services, unfortunately, too many do not. It is vital that as a state we ensure that special education programs are consistently provided to every eligible student in Texas.

We offer the following suggestions to address some of these issues:

Establishing Alternatives to the Current Dispute Resolution Options

The IDEA is predicated on the premise that parents and schools, when working cooperatively together, are uniquely suited to make the best decisions regarding the appropriate educational decisions for students. Thus, building a partnership between parents and school personnel is necessary and at the heart of making the IDEA work. When parents and educators see themselves as partners, they cooperate in the design of the student's IEP.

However, because parents and school personnel may not share identical perceptions of a child's needs, disputes are inevitable and normal. In situations when parents and schools

are unable to agree about what is appropriate for a student, the IDEA provides the right the dispute resolution system (Due Process, Mediation and the State Complaint process) to resolve disagreements.

According to the Consortium for Appropriate Dispute Resolution in Special Education (CADRE), if parents and school districts can access a less damaging, less polarizing and more responsive process, they are often willing to use it sooner, and save time, emotions and dollars. These resolution processes can address mutual concerns without doing additional harm to individuals and relationships as well as allowing parents and schools to make constructive, ongoing contributions to resolutions that affect them. These processes could include IEP meeting facilitation and/or the use of an Ombudsperson Program.

Facilitation of IEPs: IEP meeting facilitation is quickly becoming one of the most recognized strategies for improving the effectiveness and efficiency of IEP meetings. In a facilitated IEP meeting, a trained facilitator assists members of the ARD develop or review a student's IEP and address differing opinions. Providing IEP facilitation when a possible disagreement is contemplated, such as at the 10 day recess ARD, could help ensure the IDEA process is correctly followed, the focus of the meeting stays on the needs of the student and the lines of communication stay open.

Many school districts have participated in regional education service center training on the IEP facilitation process and some districts are providing IEP facilitation from within their districts. A few school districts have chosen to provide Independent IEP facilitation when determined to be necessary. However the majority of school districts do not consistently or uniformly offer Independent IEP facilitation as an option for alternative dispute resolution. There are no state policies or procedures to offer Independent IEP facilitation statewide or any other local alternative dispute resolution process. Most other states offer some form of alternative dispute resolution beyond the IDEA required Complaint, Mediation and Due Process Systems. Texas needs to develop a statewide Alternative Dispute Resolution System/Continuum that includes a statewide Independent IEP Facilitation Process.

Ombudsperson Program: Providing a parent liaison or an ombudsperson, not directly connected with the school district, allows parents an opportunity to have someone they trust answer their questions, listen to them and/or help them understand the special education process. A special education Ombudsperson can provide information to help families and educators understand state and federal laws, rules, regulations, and to access training and support, technical information services, and mediation services, as appropriate. While some districts currently employ parent liaisons or ombudspersons, they are not available statewide and there are no state policies or procedures regarding this practice.

Parent Training

Another way to avoid adversarial situations is to improve access to information so parents are more prepared to participate in the special education process. This could include additional training opportunities and resources for parents and teachers regarding their

rights, the special education process; and the legal expectations for a child's education. When parents know their rights and school personnel know that parents are informed, potential conflicts can often be avoided or resolved. While training is available in some places, there needs to be additional incentives to for districts and/or Education Service Centers to actively partner with local parent and advocacy groups to provide training for parents on the special education process.

Teacher Training and Preparation

Current university teacher training programs do not require adequate pre-service courses and field placement requirements that prepare all teachers to teach and provide support to students with disabilities in the regular classroom. Students graduating from University regular education teacher training programs are not required to take courses that will give them even the minimum competencies required to teach reading effectively, provide instructional accommodations, understand and implement positive behavior/classroom management techniques, and to identify students with disabilities. Students studying to be regular education teachers are not required to have field placements in regular education inclusive classrooms with students with disabilities. Further, alternative Certification Programs do not require teachers to complete all coursework prior to certification and do not require at least one year of supervised teaching necessary to prepare teachers to teach and provide support to students with disabilities in the regular classroom.

Moreover, there are no standard statewide in-service training requirements for teachers to ensure they have the basic competencies necessary to teach and provide support to students with disabilities in the regular classroom, such as instructional modifications/supports for students with disabilities, writing, implementing, and documenting measurable scientifically based IEPs based on the TEKS.

Texas should also adopt statewide standards for Teacher certification and in-service training programs for regular education teachers at the pre service (university and alternative certification programs) and in service levels to ensure regular education teachers have the skills and expertise to teach students with disabilities to progress in the general education curriculum as required by federal law. Also, Texas should ensure regular and special education teachers who are certified by alternative certification programs complete all coursework and supervised field experiences.

Likewise, currently there are no certification specializations other than for students with visual impairments and auditory impairments. Many schools however designate certain teachers as the Autism Specialist, Behavior Specialist, Transition Specialist without any uniformity to the knowledge and experience of these specialists. There is no statewide requirement for the coursework and/or training and supervised field experience required for these special education specialists

Texas should establish minimum certification requirements and/or minimum qualifications for special education teachers and other school personnel serving students with disabilities

Discipline and School Wide Positive Behavior Supports

Currently many families are not able to get the behavior services needed by their children. These services should be provided by trained and supervised personnel and can be costly. Additionally, many schools do not have the trained personnel to adequately provide these services

Texas needs to develop a process for students whose behavior impairs their ability to learn, including students with Autism Spectrum Disorders, to have uniform and consistent access statewide to individualized research based positive behavior supports and interventions provided by trained and supervised certified teachers and behavior specialists to ensure they receive a free appropriate public education.

Additionally, because of a lack of appropriate training and behavior support services, students with disabilities are overrepresented in school discipline, including restraint, suspensions and removals. School districts often call the police regarding students' disability related behaviors. This often results in students receiving tickets that require an appearance in municipal court for minor school conduct code violations. Much of this conduct is related to a student's disability and can be appropriately addressed by the provision of appropriate behavior supports and services as required by federal law. Research shows that a school-wide approach using Positive Behavioral Supports (PBS) effectively increases appropriate behaviors of all students. When this school wide approach is used in conjunction with trained and supervised personnel using individualized functional behavioral analysis and development and implementation of positive behavior intervention plans for specific students who need these services, PBS can ensure both a free appropriate public education in the least restrictive environment for students with disabilities and provide a school-wide environment that is safe and conducive to learning for all students. Therefore, Texas needs to provide incentives to school districts with disproportionate numbers of students with disabilities in disciplinary settings to implement school wide positive behavior supports.

TEA Monitoring

It is crucial for the success of the IDEA in all Districts, that schools are held accountable for IDEA implementation. Therefore, TEA must effectively monitor IDEA implementation and school outcomes for special education students. TEA should also increase its role in monitoring the dispute resolution process and holding local districts accountable. This could include collecting data regarding the number of complaints and hearings, the outcomes and cost, etc. This information should then be made easily accessible by parents and advocates. If local districts believe that TEA is meaningfully monitoring special education outcomes and dispute resolution, we believe that positive changes will occur.

Residential Facility Monitoring - Angel G.

In 2005, the Texas Education Agency (TEA) entered into a consent decree with the plaintiffs in Angel G. et al. v. Texas Education Agency et al. This followed an April 2004,

District Court decision that TEA had not met its legal obligation to maintain a special education monitoring system that both identified and corrected noncompliance by local education agencies (LEA) serving students residing in residential facilities (RFs). The consent decree required the TEA to develop a specific monitoring system designed to address the unique needs and circumstances of students with disabilities residing in residential facilities. The consent decree expires on December 31, 2010, unless the District Court grants a request of one or both parties to extend the term of the consent decree.

Because of the unique and vulnerable population of students that reside in RFs, who are often separated from their parents/guardians and have little access to family members who can advocate for the educational services they require, it is imperative, that TEA continue to actively monitor these programs and protect the educational rights of these students through a monitoring system designed to address their unique circumstances

Planning / Transition

Planning in advance is important to help avoid potential misunderstandings and conflicts, as well ensure an appropriate program. Unfortunately, it appears that meaningful planning for transition to after school is not happening for many students with disabilities.

Schools should ensure that parents of students with disabilities are informed about Transition issues. Therefore, TEA and HHSC should develop and distribute a Texas Comprehensive Transition/Employment Manual and local ISDs should distribute this manual to special education students 14 years of age and older. The manual should be updated biannually and posted on the TEA and HHSC agency web sites. Further, it is important to require that transition planning begin at age 14 when a student enters high school in order to provide sufficient time to successfully plan transition to life after high school. Additionally, the use of person centered planning techniques can help a school understand all of the needs of a student. Also, TEA should ensure each district or co-op designates a transition specialist who is not only familiar with the content of the manual but who can develop relationships and work closely with local agency representatives to ensure interagency coordination for the student during the transition process. Finally, TEA should identify new data indicators to be included in the TEA Performance Based Monitoring and Analysis System (PBMAS) to collect data on students in special education who are receiving employment/supported employment services and students who are receiving support to participate in post secondary education settings and courses.

Charter Schools

Finally, charter Schools for students with special needs have been suggested as a way to meet education needs of some students. While charter schools may be one solution for some students, they may not be the answer to all the challenges facing our special education programs. The 2004 amendments to IDEA affirm that students who attend charter schools are covered under the federal law. Children with disabilities who attend public charter schools and their parents retain all rights under the IDEA and they must be served in the same manner as a district serves children with disabilities in its other

schools. Additionally, all other provisions of the law still apply. Further, Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act (ADA) require that educational programs be operated free from discrimination on the basis of disability. Thus, open enrollment charter schools must be available to any student that applies.

Therefore, when considering Charter School programs for students with special needs, Texas has an obligation to ensure that these Charter Schools: provide instruction in the least restrictive environment; ensure students receive necessary supplemental aids, services and accommodations in a regular education classroom with non-disabled peers; ensure students have enrolled grade level standards based Individualized Education Programs (IEPs); ensure students progress in the enrolled grade level general education curriculum and participate in statewide assessments; ensure students have access to related services and other school support services; and ensure students are taught by and receive services from certified highly qualified teachers and related services personnel.

Additionally, Texas needs to ensure that districts that utilize charter schools as part of their continuum of services continue to provide a continuum of services throughout the district and ensure that enrollment in a Charter school continues to be parental choice.

Thank you for allowing me to testify.

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