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SENATE: EDUCATION, ENERGY, AND THE ENVIRONMENT AND BUDGET AND TAXATION COMMITTEE

SENATE BILL 797 – EDUCATION – ACCESS TO ATTORNEYS, ADVOCATES, AND CONSULTANTS FOR SPECIAL EDUCATION PROGRAM AND FUND - ESTABLISHED

DATE: FEBRUARY 23, 2024

POSITION: SUPPORT

I am Selene Almazan and I am an attorney in private practice in Maryland. I have been an attorney for over 35 years, representing students in special education matters in both the nonprofit and private firm settings. I am also the Legal Director for the Council of Parent Attorneys and Advocates, COPAA, a national nonprofit membership organization of parents, attorneys, advocates, and related professionals who work to protect the civil rights and secure excellence in education on behalf of all children ages 0 through 21 eligible for special education services under the *Individuals with Disabilities Education Act* and those K-12 students with disabilities protected by Section 504 of the Rehabilitation Act of 1973. Because of my work and longtime experience, I have a national as well as a state perspective on families and the struggles they face trying to secure appropriate special education services for their children. Please accept my written testimony in support of Senate Bill 797. Senate Bill 797 will establish the Access to Attorneys, Advocates, and Consultants for Special Education Program and Fund.

Parents are key members of the IEP Team.¹ And as the U.S. Supreme Court has repeatedly emphasized, parent participation in the IEP decision-making process is essential to implementing the education rights of children with disabilities that Congress sought to protect with IDEA.²

IDEA contemplates that parents will “protect the substantive rights provided to their children” through IDEA’s procedures. *Schaffer v. Weast*, 546 U.S. 49, 53 (2005) (cleaned up)). Indeed, “[o]ne of the central

¹ 20 U.S.C. § 1414(d)(1)(b); 34 C.F.R. § 300.321(a)(1), § 322(a)-(f).

² *Endrew F. v. Douglas County School District. RE-1*, 137 S. Ct. 988, 994 (2017) (“These procedures emphasize collaboration among parents and educators and require careful consideration of the child’s individual circumstances.”). *Honig v. Doe*, 484 U.S. 305, 311 (1988) (“[e]nvisioning the IEP as the centerpiece of the statute’s education delivery system...and aware that schools had all too often denied such children appropriate educations without in any way consulting with their parents, Congress repeatedly emphasized throughout the Act the importance and indeed necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness.”); *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-206 (1982) (“the importance Congress attached to these procedural safeguards cannot be gainsaid...Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process...as it did upon the measurement of the resulting IEP against a substantive standard...{T}he congressional emphasis upon full participation of concerned parties throughout the development of the IEP...demonstrates the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP.”).

innovations of the special education law, and a key to its success, is that it empowers parents to participate in designing programs for their children and to challenge school district decisions about educational services and placement.”³

The special education process involves the development and implementation of Individualized Education Programs (IEPs) for students with disabilities. IEPs are developed by a multidisciplinary team of educators and related service providers as well as parents and the student. Despite parents being full members of the IEP team, there are significant power imbalances between schools/districts and families.

The IEP meeting can be a complicated process for parents. Senate Bill 797 would establish access to attorneys, advocates and consultants for families who may need assistance. Many families face an IEP meeting with education professionals and may not be equipped to understand complicated concepts such as baseline data to determine progress or functional behavior assessments. A consultant or advocate can assist parents in these meetings and help ensure that parents are able to meaningfully participate in IEP meetings. Senate Bill 797 would also give parents the opportunity to retain an attorney if needed. An example of this scenario may be if a parent requests an Independent Educational Evaluation (IEE), a substantive parental procedural right in IDEA, and requests that the school district pay for the evaluation. The school district can either pay for the IEE or file a due process hearing request against the parent. The parent would need counsel to help defend their position. Senate Bill 797 would provide an attorney for a parent in this scenario.

For these reasons, I support Senate Bill 797.

³ Mark C. Weber, *Litigation Under the Individuals with Disabilities Education Act After Buckhannon Board & Care Home, Inc. v. West Virginia Dep't of Health & Human Resources*, 65 Ohio St. L.J. 357, 369 (2004).