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December 5, 2017

Honorable Matt Huffman
Senate Building, Rm. 125
1 Capitol Square, 1st Floor
Columbus, OH 43215

Re: Senate Bill 216 and the Impacts on Students with Disabilities

Dear Senator Huffman,

Disability Rights Ohio (“DRO”) appreciates your time and consideration regarding our concerns with Senate Bill 216 (“SB 216”). DRO is the federally mandated, and state designated, protection and advocacy system with the mission to advocate for the human, civil and legal rights of people with disabilities in Ohio. Our work includes helping students with disabilities know their rights and navigate them through the education system. This includes ensuring schools adhere to a student’s Individualized Education Program (“IEP”) and the Individuals with Disabilities Education Improvement Act (“IDEA”) which requires students with disabilities receive a free appropriate public education in the least restrictive environment. Because of this work DRO provides a unique and essential perspective on SB 216.

As you know, SB 216 is aimed at deregulating and reforming current school regulations. Though the spirit of this bill is not to have a harmful impact on the education of students with disabilities, language in the legislation could impact these individuals. Attached is a report detailing multiple provisions of the legislation DRO would like to address with the following being a brief summary of five (5) core concerns:

1. Removal of licensure requirements for Education Assistant substitutes;

This creates an increased danger of physical and sexual abuse of students with disabilities. The current language is unclear if these employees would receive routine background checks. Under SB 216, students with disabilities are at a greater risk of abuse and neglect due to aides providing extremely personal health services, often unsupervised. Specifically, this provision could impact students who may be non-verbal or unable to effectively communicate their treatment.

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2. Removal of the requirements for substitutes to be qualified educators;

DRO has received numerous complaints regarding the use of long-term substitute teachers serving as intervention specialists, SB 216 would worsen the situation. **Allowing school districts more authority over who can provide specialized instruction would hurt students with disabilities the most** and lead to more examples of unqualified individuals being permitted to provide specialized instruction like the example at 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. Obviously, the long-term substitute did not meet the qualifications required by the student's IEP, which violated the district's statutory requirements¹. Additionally, there is no time limit on how long these unqualified substitutes could provide services leading to students not receiving a quality education. This provision conflicts with the IDEA's requirement that students with disabilities be served by qualified special education teachers.

3. Increasing the reporting size of a sub-group population of students required for the school district's annual report card;

A larger reporting size (N-size) of students increases the likelihood students with disabilities will be eliminated from reporting requirements, particularly smaller and rural school districts. Many of these schools would not meet this requirement and without proper data it would be nearly impossible to quantify the achievement gap between students with disabilities and those without leading to an inability to establish better education policy. This could result in worse educational settings, services, and supports for students with disabilities.

4. Decreasing the minimum number of hours required for services provided by a center-based teacher;

In our experience, schools only meet the minimum service hour requirements, so 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 could lead to a lower quality educational system for students with disabilities.

5. Removing the requirement 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

¹ 20 U.S.C. § 1412 (a)(14) and OAC § 3301-51-09 (H)(3)

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their peers and **without an established intervention plan to help make up for missed work, the achievement gap would worsen.**

We understand and recognize the hard work school administrators undertake when fulfilling federal and state reporting requirements to provide quality education services to all students. However, SB 216, in its current form, does not help ensure schools meet this obligation.

Thank you for your time and consideration of the concerns DRO has regarding SB 216. We look forward to working with you and your staff on this legislation. If you have any questions or wish to discuss the legislation further please contact myself or Jordan Ballinger, Policy Analyst (ext. 135).

Respectfully,

A handwritten signature in blue ink, appearing to read "Michael Kirkman", with a long, sweeping horizontal line extending to the right.

Michael Kirkman
Executive Director

c: Honorable Peggy Lehner

DISABILITY RIGHTS OHIO
SENATE BILL 216 MEMORANDUM
DECEMBER 5, 2017

I. Training Compliance – Lines 1726-1754

This section¹ requires only a yes or no response to whether training on restraint and seclusion was provided. It is unclear whether the reporting required in this section would eliminate the reporting already captured by the Ohio Department of Education for restraint and seclusion pursuant to OAC 3301-35-15. To the extent that this section would affect reporting on restraint and seclusion, it should not eliminate the current reporting requirements on restraint and seclusion.

Most incidents of restraint and seclusion in Ohio's schools involve students with disabilities. Current reporting requires school districts to report using a survey that captures information on policy adoption, state of PBIS development for each school, training provided and components included in the training, incidences of restraint and seclusion, including restraints/seclusions on typical students, students with disabilities, restraints/seclusions with injury, restraint/seclusion where student had FBA/BIP, and restraints/seclusions that led to suspension/expulsion. This information provides greater detail that can be used to help school districts identify overuse of restraint and seclusion and where interventions would be most useful to decrease incidents of restraint and seclusion. Data collected from a yes no format as proposed in this section would not be useful for making improvements to Ohio's educational system.

II. Reporting Groups – Lines 2222-2228

This provision² proposes to increase the N-size (number of students in a subgroup) for data reporting in Ohio's annual Report Cards. A larger N-size would increase the likelihood that significant numbers of students, including students with disabilities, would be excluded from data reporting and conflicts with Ohio's ESSA plan.

Ohio school districts report information to the Ohio Department of Education on six components that make up a school district's Report Card. The components are Achievement, Gap Closing, K-3 Literacy, Progress, Graduation Rate and Prepared for Success. Within each component, school districts are required to report the performance of various subgroups of students, one of which is students with disabilities. The Ohio Department of Education uses the information reported to develop schools' and districts' annual Report Cards. According to the Department, the Report Cards provide families, educators and the community with the information they need to fully understand how the students in their schools are performing.

Whether a school district or school building is required to report the performance of a specific subgroup depends on the N-size of that subgroup within a building or the district. **The higher the N-size, the greater the likelihood that students will not be included in Report Card data.**

¹ Ohio Senate Bill 216 § 3301.68 (A) & (B)(1) through (6)

² Ohio Senate Bill 216 § 3302.03 (F)(13)

Ohio currently uses 30 as the N-size, and considers 10 to be the minimum aggregate threshold that can be used to protect the identification of individual students. For example, a school building in a small school district may not have 30 students with disabilities on which to report performance. Using an N-size of 30, the school district would not report the performance of any students with disabilities in that building and such performance would not be reflected in the Report Card. As a result, the families in that district may not have reliable information about the performance of students with disabilities. As students with disabilities are already performing well below students without disabilities, it is important to include as many students with disabilities as possible in the accountability system to ensure that reliable data on their performance are available.

The effect of a smaller N-size is especially pronounced for students with disabilities. Decreasing the N-size for students with disabilities would dramatically increase the number of students with disabilities counted by their districts. **For example, only 78.3 percent of students with disabilities statewide are included in their school subgroup analysis with the current policy of N-size equaling 30.** Adjusting the N-size to 10 would increase that number to 96.1 percent. In contrast, the same adjustment for white students would increase the number of students included by just .6% (99.2% to 99.8%). Ohio's ESSA plan calls for a decrease in Ohio's N-size to 15 over time. The proposed N-size in this section conflicts with Ohio's ESSA plan, and will result in fewer students with disabilities being counted in Ohio's accountability system.

III. Nonteaching Employees in Federally Funded Programs – Lines 3409-3414

It is unclear the rationale for including the phrase “working in a federally funded program” in this section³. This language also appears to exclude from licensure requirements those individuals who may not be working in a federally funded program, but who may be providing services to students with disabilities. However, as described in more detail below, students receiving services under federally funded programs (e.g. students with disabilities receiving services under IDEA) are entitled to specialized services provided by qualified individuals. As this added language is included in a section that appears to allow unqualified and unlicensed individuals to provide services to students with disabilities, it conflicts with federal law.

At the outset, it would be very difficult for a school district to determine whether an employee is working in a federally funded program, as a school district can be the recipient of multiple sources of federal funding from a variety of federal government agencies. Federal funding designated for one school program may attach to the district as a whole for purposes of determining whether the district is a federally funded program. Making this distinction, and determining which staff meet this designation would be complex, and would require increased staffing and resources of school districts. Further, in addition to the requirement to provide students with disabilities qualified and licensed services pursuant to federal IDEA law (students served through IEPs), there are also students with disabilities protected by Section 504 of the Rehabilitation Act (which does not provide funding to schools) who are also entitled to a free

³ Ohio Senate Bill 216 § 3319.088

appropriate public education (FAPE). These students, and students with IEPs, more frequently attend classes in the general education environment where they can be served by general education staff. The proposed language, if it allowed for an unlicensed person to serve these students, would violate federal law.

Federal special education law requires the IEP team to place students with disabilities in the least restrictive environment (setting with the most students without disabilities-usually the general education environment) whenever appropriate. The proposed language could encourage IEP teams to make educational placement decisions based on where “federally funded program employees” are working, and not on the child’s individual need for least restrictive environment. This would violate federal law.

IV. Long-term Substitutes – Lines 3526-3528

It is unclear what type of employee is contemplated in this section⁴. Two concerns arise to the extent this provision affects students with disabilities and conflicts with federal special education law. **This section does not limit how long an unlicensed/unpermitted nonteaching employee can act as a substitute for a licensed/permitted educational assistant.** Many licensed educational assistants are part of individual education programs (IEPs) for students with disabilities and provide services necessary for the provision of a free appropriate public education (FAPE). These educational assistants are often trained to provide support for instruction and behavior. If unlicensed/unpermitted individuals are allowed to act as substitutes, this may result in the denial of FAPE to students with disabilities as the students may not be receiving the type of service required by their IEPs.

Additionally, it is **unclear whether these “non-teaching” employees would receive routine background checks.** Educational assistants serving students with disabilities often assist those students with activities of a personal nature that are performed without supervision or in private, including toileting, dressing, and feeding. Many of these students are vulnerable because of the nature of the care they require and physical and communication limitations. Allowing individuals, who do not receive routine background checks, to serve in these positions creates an increased danger of abuse of students. Further, that abuse would go unaddressed by the Ohio Department of Education as individuals under this section are not subject to oversight and potential discipline by the Office of Professional Conduct.

V. Unqualified Personnel – Lines 4123-4138

To the extent this provision⁵ applies to students with disabilities, it appears to conflict with federal law (IDEA) and other sections of the Ohio Revised Code as **it may result in unqualified individuals providing special education services to students with disabilities. Both Ohio law and IDEA require that students with disabilities are served by qualified special education**

⁴ Ohio Senate Bill 216 § 3319.088 (D)

⁵ Ohio Senate Bill 216 § 3319.226 (A) through (C)

teachers (i.e. intervention specialists), who are knowledgeable in the content areas in which they teach. 20 U.S.C. 1412(a)(14) and OAC 3301-51-09(H)(3). This section appears to allow the use of long-term substitutes as teachers for students with disabilities notwithstanding the fact that the substitutes may not be intervention specialists or knowledgeable in the relevant content areas. This is especially problematic for students with disabilities as there already exists an achievement gap between students with disabilities and students without disabilities that widens when students with disabilities do not receive services from a qualified special educator.

Disability Rights Ohio has received numerous complaints regarding school districts' use of long-term substitute teachers serving as intervention specialists for students with disabilities, but who are not licensed as such or knowledgeable in the content areas in which they are teaching. In response to one such complaint, Disability Rights Ohio filed a state complaint with the Ohio Department of Education, which resulted in findings of violations of federal law against the school district. The school district was required to hold additional IEP meetings to determine what compensatory education (e.g. individual tutoring) was necessary to remedy the violation. By allowing school districts to place unqualified individuals in classrooms serving students with disabilities, this section increases the risk of systemic denials of FAPE to students with disabilities and the widening of the achievement gap.

VI. Federal Non-Compliance – Lines 4139-4144

This provision⁶ raises similar concerns as those raised above. This section appears to allow unqualified individuals to teach special education, which conflicts with federal and Ohio law. Also, this provision undermines the purpose of Section 3319.22 of the Revised Code (standards and requirements for educator licenses) because it allows a superintendent to circumvent that law entirely.

VII. Excused Absences – Lines 4175-4185

This section⁷ removes excused absences from the count required to determine excessive absences. Current law counts both excused and unexcused absences to determine whether a student is excessively absent and in need of an intervention plan. Removing this language is detrimental to students with disabilities because it will lengthen the time until schools will intervene to develop a plan to prevent excessive absences.

Excessive absences from school have long-term, negative effects on students, such as lower achievement and lower graduation rates. The Ohio General Assembly passed House Bill 410 last December to encourage and support districts in a preventative approach to excessive absences and truancy. **Students with disabilities often miss more school than their peers without disabilities due to disability related concerns such as need for therapy or medical**

⁶ Ohio Senate Bill § 3319.361

⁷ Ohio Senate Bill § 3321.191 (C)(1)

appointments, disability related school phobia, sleep disorders, and behavioral issues resulting in school removals. For students with disabilities who are already frequently behind their peers in achievement and graduation rates, early intervention to ensure regular school attendance is critical in closing the achievement gap. Further, students with disabilities are removed from school due to behaviors (suspensions or expulsion) at a much higher rate than students without disabilities. These school sanctioned removals are often counted as excused absences if the suspension is in-school or if services are provided during the suspension. School districts are required to provide services to students with disabilities who have been suspended from school for more than ten school days. Under the proposed language, these absences would be considered excused and not count toward excessive absences. **This can result in a student being out of school for a significant period of time without triggering the requirement for the school to develop an intervention plan.**

VIII. Minimum Hours of Service – Lines 4330-4333

This section⁸ requires that a minimum of ten hours of services per week be provided for each child served by a center-based teacher unless otherwise specified in the child's individualized education program, which conflicts with Ohio's ESSA state plan. The ESSA state plan set this number at twelve and a half hours. While this section takes into account exceptions for services required by a child's IEP, in practice, many IEPs are developed based on the level of services IEP team members know are available in a program. This results in IEPs that are aligned with the services available, but provide fewer hours of service than are necessary for the individual child. For this reason, it is important to keep the higher requirement for minimum hours as it will result in more IEPs that are providing appropriate services.

IX. Home Schooled vs. Home-Instructed – Lines 4710-4712

It appears that incorrect terminology is used in this section⁹. This section should replace the term "home-instructed" with "home schooled." Federal special education laws (IDEA, Section 504) use the term "home instruction" to mean students who are being provided services by their school districts outside of the school setting, usually in the student's home. Students who receive home instruction are entitled to a free appropriate public education (FAPE) at no cost. 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. This would violate the FAPE requirement of federal laws.

Students who are "home schooled" are excused from school attendance requirements in state law, and are educated by their parents. Home schooled students no longer receive services from their school district, and the school district is not required to provide a FAPE to students with disabilities who are home schooled. For these students, participation in the college credit plus program can have associated fees and costs without violating federal law.

⁸ Ohio Senate Bill 216 § 3323.022 (C)

⁹ Ohio Senate Bill 216 § 3365.072 (C)