



## **CONCERNS REGARDING S.B. 1490 AUTHORED BY SENATOR WATSON**

The Texas Council of Administrators of Special Education has the following comments and concern regarding provisions within S.B. 1490:

The proposal to transfer the special education due process hearings to the State Office of Administration of Hearings raises several concerns which TCASE believes should be recognized by the committee:

A. There has been much rhetoric that the transfer should occur because of a perception that the system is "broken" or "biased". The support for these claims arises out of several misstatements of the facts. One is that parents never prevail in hearings. The committee should know that nearly 75-80% of all hearings filed end in resolution agreements to which the parents are in agreement. Simply because these cases do not proceed through the full adversarial process should not be an indictment for the system that hears the remaining minority of claims. In addition, many of the disputes which end up in hearing result in partial "victories" for both parent and school district alike. Parents, in such cases, may be entitled to reimbursement for some or all of their attorney's fees. Only those cases where the school district prevails on all matters is the possibility of attorney's fees foreclosed. The rhetoric also ignores that the burden of persuasion and proof, consistent with federal law and the holding of the US Supreme Court, is upon the party challenging the IEP. A transfer to SOAH will not change any of these factors.

B. The IDEA is a massively complex set of procedures and regulations. Congress specifically made the procedural process complex and cumbersome to ensure that, upon compliance with the procedures, a school district would necessarily provide a quality program and achieve compliance with the Act's intent to provide a free appropriate public education for students with disabilities. The Supreme Court has also stated that the findings of the education officials below, referring to the special education due process hearing officers, should not be disturbed lightly. The reviewing courts, while obligated to provide a "virtual de novo" review, give much deference to the findings of the trained hearing officers. This is all stated to demonstrate that the evaluation of a parent's complaints and a school district's position requires extensive familiarity with the law, its regulations and court interpretations numbering in the thousands. A hearing officer from SOAH, untrained in this area of law, will find the decision-making to be quite difficult. If the hearings are transferred, the state must be prepared to invest

heavily in the training of the hearing officers in the substance of special education law.

C. If the intent of transfer is to save financial resources, TCASE is unaware of any findings of cost savings arising from the study previously approved by TEC 29.0161. If the purpose is to simply have parents prevail more often, TCASE is offended at the notion that justice is obtained by engaging in forum shopping. Without any evidence of bias or prejudice, it makes no more sense to move the hearing process out from TEA's direct oversight than it would to transfer employment cases from the Fifth Circuit to the 9th circuit.