Testimony of
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Good morning, Chairman Kennedy, Senator Gregg, Senator Bond and other distinguished members of the committee. I am honored and privileged to come before you today to speak on behalf of parents and their children with disabilities and public school educators of this nation. I come before you today as a parent and as an educator. I am a parent of two children who have had individualized education programs known as IEP's. They are representative of the majority of students with disabilities in this nation. One had an IEP for speech services while in elementary school. She required services for several years and was successfully remediated and no longer required special education services. The other daughter was diagnosed with epilepsy in infancy that resulted in educational diagnoses of speech/language disorder and learning disabled. She received multiple services and a change in the type of services as she progressed through school. She received speech therapy, occupational therapy, and specialized instruction in elementary school. As a secondary student and college student, she required accommodations as outlined in a 504 Plan under Section 504 of the Rehabilitation Act of 1973 to address continued math deficiencies and ADD. I am proud to say she is graduating from college in May 2002. She exemplifies what the vast majority of children with disabilities have experienced in this nation—the IDEA works well for them.

As an educator, I come to you today with a historical perspective on special education. My career began in special education four years before the original statute, the Education for All Handicapped Children's Act, was passed in 1975. With the exception of leaves of absence at the birth of each of my three daughters, I have been either a teacher of children with disabilities or an administrator of programs for children with disabilities for the past thirty years.

I became a teacher of students with disabilities in 1971. I was there when Public Law 94-142 planted its roots firmly in the soil of prejudice. Before 1975, we as a people of this nation prejudged and unknowingly misjudged who could benefit from public education. In our ignorance of how to educate, we assumed that some children could not be educated. The original P.L. 94-142 was enacted to provide keys to the schoolhouse door. Today, the doors to the schoolhouse are opened wide to all children. Our reality is all children can learn. Early intervention services have provided a positive start for many young children with disabilities. Many children have received services that enabled them to return to the general education curriculum. IDEA has been very effective in supporting the educational needs of children with disabilities. It is time to embrace the spirit of the original statute and move forward with common sense reform. The original language of the statute that provided an impetus for change in the 1970's appears unnecessarily contemptuous of educators in the twenty-first century. Dr. James Ritter, Superintendent of Columbia Public Schools, stated, "The perception communicated by the federal law (IDEA) is public schools would either under serve or stop serving students with special needs if the law was not forcing us to do otherwise. There

could be nothing further from the truth. These are our children. We have the same hopes and dreams for them as all children in our community and the same commitment to excellence in education. The law perpetuates a gross misrepresentation of the commitment of the citizens of our community to leave no child behind."

The spirit of Public Law 94-142 must be preserved. Common sense reform of the IDEA must happen. It is long overdue. In a presentation by attorney Elena M. Gallegos of Walsh, Anderson, Brown, Schulze & Aldridge P.C. at the Education Law Association's 47th Annual Conference in Albuquerque, N.M. on November 17, 2001, she remarked on comments made by President Gerald Ford on December 2, 1975 upon his signing of P.L. 94-142. President Ford stated in part, "[T]his bill promises more than the federal government can deliver, and its good intentions could be thwarted by the many unwise provisions it contains." In the March 2002 Special Education Law Update, Ms. Gallegos points out the negative aspects of P.L. 94-142 observed by then-President Gerald Ford that have proven true: "There are other features in the bill which I believe to be objectionable and which should be changed. It contains a vast array of detailed, complex and costly administrative requirements under which tax dollars would be used to support administrative paperwork and not educational programs. Unfortunately, these requirements will remain in effect even though the Congress appropriates far less than the amounts contemplated in [the law]." President Ford's prophetic words have become the reality of public educators across the nation. Although Congress has been either unable or unwilling to financially support the original statute as

envisioned by its creators, Congress must now strive to preserve what is working and remove the harm in the statute.

Paperwork mandated by the federal law and regulations must be significantly reduced in volume and complexity.

- **The paperwork burden is fundamentally detracting from the education of students with disabilities. Teachers of students with disabilities have the same paperwork requirements as all teachers—i.e. lesson plans, grading papers, report cards, and normal written communication to parents. In addition, teachers of students with disabilities create individualized education plans, send legal written notices regarding the convening of IEP meetings, send written legal notices of any change in services or changes in placement, and document all written and/or verbal communication to parents. At times the process is so burdensome that changes that could benefit a student are simply not made. An example of the nature of the problem is demonstrated in the following scenario of an actual event. A teacher called her local director of special education to ask a compliance question. The teacher reported speaking with a parent about an academic problem her son with a learning disability was having. The teacher and the parent had put their heads together and came up with a possible solution—the special education teacher would pull the student aside for an additional 20 minutes of one-on-one instruction two or three times a week as needed to pre-teach or re-teach vocabulary words. They were both excited**

about the possibility of reduced frustration on the part of the student and the potential for real academic gain. The question was whether the IEP team had to be reconvened or whether the agreement of the parent and teacher was enough. The common sense response would be to document the changes on the IEP and proceed. The reality is that the teacher must give the parent notice of the IEP meeting with all required components including a copy of Procedural Safeguards for Parents and Children under the IDEA. A properly constituted IEP team with all required members must be coordinated and an agreeable meeting time scheduled. The parent must take off work or otherwise arrange to attend the meeting. If an emergency should prevent the parent from attending on the scheduled day or time, another legal notice of a rescheduled meeting must be provided to the parent with a second copy of procedural safeguards. Once at the meeting, if all members are in agreement with the parent and teacher to add some minutes of service, the IEP must be rewritten in its entirety to incorporate the change. If service minutes are changed even by one minute, a legal notice of change of services must be provided in written form to the parent complete with all required components. If the student was currently in a modified regular education placement and the additional minutes resulted in the total service minutes away from non-disabled peers totaling more than 21% of the time, a change of placement would be necessary. A change of placement requires consideration of a reevaluation. The team must complete all the paperwork necessary to document consideration of reevaluation and proceed

with the evaluation if deemed necessary by the IEP team. An additional written legal notice is required to fully inform the parent in writing of that decision as well. The end result of a good idea shared in a ten-minute conversation between parent and teacher that could benefit a child's educational progress has now taken over two-and-a-half hours of meeting and paperwork time under the requirements of the IDEA. Is it any wonder that both parents and teachers, at times, say, "it just isn't worth the hassle?" Legally, the director could not have responded with the common sense answer of simply documenting the change agreed upon by the teacher and parent in the existing IEP. To meet the legal definition of a free appropriate public education, the district must meet both the excessive procedural and substantive requirements. We need to have the flexibility to change IEP's during the time span covered by the IEP without sending legal notices of a meeting, without convening the full committee or rewriting the entire IEP document. A recommendation for addressing the excessive time and paperwork burden illustrated in the above scenario would be to limit the requirement for a comprehensive IEP meeting to once annually. A parent and teacher could agree to make changes, if necessary, in a parent-teacher conference during the one-year period of the IEP. Any changes to which a teacher and parent agree can be documented in the existing IEP with parents receiving a copy of the changes. The focus should be on normalizing communications between parent and teacher as much as possible as they are

striving to provide for the unique, and sometimes changing, needs of the student with disabilities.

- **Another problem with the complexity of the regulatory aspects of the IEP process is the time it takes teachers, counselors, therapists and administrators away from the instructional focus of education. Who is teaching the children during times when all of the staff are involved in marathon IEP meetings, diagnostic conferences, mediation, preparation and participation in due process hearings and other meetings required by the current special education process? No matter how good the substitute teachers are (if you can find one), they can never provide the quality of services provided by the child's special education teacher. School officials know that one of the characteristics of an outstanding school is the time the school staff spends on instruction. Pulling staff out of the classroom for all of the meetings required by the current special education process significantly decreases the amount of time special education teachers spend in direct instruction. Children with disabilities do not learn by simply being there. Children with disabilities require direct, personalized instruction. The child's teacher can best provide such instruction. An illustration of the extent of time away from instruction required to conduct one IEP meeting per year, of average length in time, for all children diagnosed with a disability in the Columbia Public School District totals 89,375 hours of lost instructional time or the equivalent of 78 school years of instruction.**

- **Although the extent of the paperwork in special education varies from child to child based on the number of IEP meetings, reevaluations and notices that are relevant to an individual child's situation, it is the complexity of the paperwork that increases the frustration of teachers and parents and wastes valuable time and resources. The rules are too numerous. Even after extensive training, teachers find it necessary to stop and consult with a process coordinator or director of special education to ensure compliant paperwork. Veteran teachers are as frustrated as novice teachers when the rules change frequently through litigation or changes are made at the federal or state level. At any point in time, administrators, process coordinators and teachers are uncertain how to properly complete the paperwork. This is equally as daunting to many parents.**

- **With increased accountability for the progress of students with disabilities, there is a need and a desire on the part of teachers to have updated, research-based training on effective practices. Students benefit when regular and special education teachers have time to be trained together and time to collaboratively plan instruction to meet the needs of students with disabilities. The possibilities for those opportunities are significantly diminished by the ongoing need to do compliance training. The business of teachers is educating children. The tail is wagging the dog when the focus of education is directed toward paperwork rather than effective instructional practice. As examples of this reality, the Columbia Public Schools has a week of training for new teachers in the district**

prior to the beginning of school. It takes the entire allocated time for special educators to cover procedure mandated by IDEA. The district also schedules several release days throughout the year to allow for collaboration among educators. Out of necessity, special educators spend a majority of those days receiving compliance training. In addition to other mandated training, during the 2001-2002 school year the Special Education Department of the Columbia Public Schools provided 92.5 hours of optional training on a variety of topics dealing with compliance and best practice. Over 56% of the training options dealt with compliance issues and how and when to fill out required paperwork. Imagine the innovative instructional techniques that teachers could have learned in 92 hours of training if all sessions had targeted improvement of instructional practice. Imagine the potential for improvement in student achievement. The preamble to the IDEA may talk about the goal of focusing on student achievement but we are forced by the law to walk a different walk.

- **At the heart of appropriate education is a comprehensive evaluation resulting in an accurate diagnosis. This is a necessary but time-consuming process that, according to data compiled over the course of a year in the Columbia Public School District, takes between 55 and 87 man-hours per evaluation.**
- **Of national concern is the over-identification of minorities in the total population of students with disabilities. Of a troubling nature to educators is the conflict between over-identification of minorities in special education and**

the need to ensure that every child receives and benefits from the services he or she requires.

- **An expressed concern has been the purposeful over-identification of students with disabilities in order to increase school district revenues. It is enlightening to look at data. In a district such as Raytown C-2, a suburban school district in greater Kansas City Metropolitan area, the district's sources of special education funding for the 2000-2001 school year were 8% Federal Part B receipts, 20% Missouri receipts, and 72% local receipts. In Missouri, the local tax rate is set by a vote of the patrons in the school district. For every dollar spent on a new child identified as eligible for special education, the district receives eight cents from the federal government, twenty cents from Missouri, and the other seventy-two cents comes from the local taxpayers. The local tax levy does not automatically go up each time a child is identified as having a disability. The needed dollars are taken out of the local tax dollars. Sometimes they are taken at the expense of other programs and services for students without disabilities. School districts operate in a limited resource model. There are only so many dollars available and an increase in cost in one area must be offset by a decrease in another area. There is no financial incentive to over-identify students as needing services under IDEA.**

Procedural Safeguards for Parents and Children must be rewritten. Reform needs to occur when a law is so vaguely written that litigation is required to give it definition. The IDEA is such a statute. Due process is a brutal system. It

paralyzes the educational system; it paralyzes individuals. The focus is shifted from the child to the "battle." The only ones ultimately benefiting are the lawyers. The cost of litigation is extraordinary in terms of time, money and personnel resources. Regulations need to be imposed on the right of due process in order to provide balance and protect the integrity of the system. Very few safeguards that exist in civil law proceedings regulate or protect due process under the IDEA.

- **Paramount to this matter is the lack of disclosure of issues. Although the statute is clear that parents must state their issues and propose remedies at the time of filing for due process, the regulations allow for the proceeding to move forward without doing so. It is not uncommon for parents to choose not to disclose issues and to proceed to due process with the district blind to the issues it must defend. In a recent lawsuit in Missouri, a district implored the parent to disclose their points of disagreement and mediate a solution agreeable to both parties. The parent refused multiple attempts on the part of the district to address their dissatisfaction, including offers of mediation, and proceeded with the filing for due process. The parent continued to refuse disclosure of their issues of disagreement and the district was forced to prepare without knowledge of the matter to be resolved—an unnecessarily costly process. A set of issues was articulated on the first day of the hearing and additional issues were added throughout the proceedings. The parent stated she felt it was the hearing panel's responsibility to identify issues for the parent. Prior to any allegation being presented at a**

due process hearing, parents should be required to present their concerns in writing to the district and the school should have an opportunity to respond in the context of an IEP meeting.

- **Under the IDEA, there is no safeguard for frivolous lawsuits or harassment. Although the vast majority of children with disabilities are served successfully through collaborative teamwork between parents and teachers, a single due process hearing can cost a district in excess of a year's instructional budget even when the district prevails. Under the current process, an unfortunate situation with one parent, can adversely affect the quality of education for an entire community.**
- **The increasingly excessive number of days a single due process can take has added to the prohibitive cost of the proceedings and the diverting of teachers' attention away from the instruction of children. Once again, a single child's situation can negatively impact a teacher's ability to consistently focus on the business of educating numerous children on his/her caseload. It is fair to speculate that in 1975 no one would have anticipated that the average due process hearing in the twenty-first century would take in excess of a week or two of testimony. Chief hearing officers should be trained to expedite the process, setting reasonable number of day limitations for each side to present their case. Stipulation of facts and uncontested exhibits should be presented for review by the panel without tedious and time-consuming review of each fact on each page. The toll that either the**

reality of a due process hearing or the fear of a due process hearing has on individual teachers is enormous. Teachers of students with disabilities enter the field because of their love for children and commitment to educating students with disabilities. A process that devalues their expertise and calls into question their professional judgment at every turn forces them to spend as much time documenting as teaching and creates an environment where teachers fail to risk on behalf of a child. It takes the joy out of teaching, destroys a teacher's quality of life and drives teachers from the field of special education. The contentious nature of due process destroys teacher-child relationships and parent-teacher relationships resulting in failure to trust for years to come. Qualified teachers committed to students with disabilities are indispensable in this nation. The IDEA is meaningless if we do not have qualified teachers in the classroom. Any aspect of the statute that operates to limit that pool has the opposite effect of that which the statute intended.

- **An additional area of concern under Procedural Safeguards for Parents and Children is the provision for an independent educational evaluation if a parent is in disagreement with a district's evaluation. The fact that parents do not have to disclose the area of disagreement does not allow a district the possibility of working with the parent to resolve differences. It has become for many a right for a second opinion when there is neither disagreement nor reason to suspect the district's report to be incomplete or insufficient.**

This has resulted in the over testing of children adding stress to their lives and resulting in loss of educational instruction. According to the statute, the district has an option to take a parent to due process to defend its evaluation. This presents no real alternative for districts. The cost of a due process for the sole purpose of defending an evaluation could be $25,000 to $30,000. The cost of an independent evaluation is approximately $1500. Both are a needless drain on resources that could be better spent on personnel or material resources to enhance the education of children with special needs.

- **Parents, as well as district personnel, often criticize the distribution of procedural safeguards numerous times within a year as an example of either federal excess or as contributing to the uncomfortable feeling of a legal process as opposed to an educational practice. Such a procedure may have made sense in 1975 when the IDEA was initiated. It does not make sense in 2002. The IDEA procedural safeguards should be published annually for all parents, as are Section 504 and Family Educational Rights and Privacy Acts notices. It does not make sense to provide a 14-page statement of procedural safeguards multiple times during a single school year; at times it is required to provide them several times within weeks of each other. In addition to the expense to print and at times mail the extensive document, it often creates a sense of mistrust. An annual presentation of procedural safeguards reminds parents of their rights; multiple presentations of procedural safeguards in**

close succession breeds suspicion. Parents wonder why they are being told each time they meet that they have the right to file a child complaint or go to due process if in disagreement with any aspect of their child's IEP. Procedural safeguards, as written, give the perception that special education is a hostile, confrontational, litigious process. Often at IEP meetings focusing on articulation disorders, parents have stated to the coordinator of speech/language services, "Are you a speech pathologist or an attorney? I can't believe we have to sign all of these papers to remediate a single error sound." Others question why we have to "destroy a tree" in order to provide services to their child.

It is imperative that the IDEA is fully funded and that districts are relieved of excessive paperwork and temporal obligations not clearly aimed at the target of student achievement. Many times the cost of specialized instruction, equipment and materials is significant. Districts embrace the concept of leveling the playing field to allow students with special needs an equal opportunity for high student achievement. Without adequate funds and relief of procedural excesses, limited funds will quickly dissipate ultimately resulting not only in lack of sufficient resources for students with special needs but also diminished regular teacher resources, materials and equipment. All students suffer under this reality for the majority of students with special needs spend the majority of their educational day in the regular classroom with non-disabled peers. The following data is demonstrative of the flow of limited resources away from student achievement. These measures represent genuine efforts on the part of districts to

compensate and relieve teachers of some of the excessive paperwork burden. If excessive requirements under the IDEA did not exist, the money could be spent on more training for regular and special educators and more resources for teachers and students related to effective instruction.

> **The Springfield R-12 School District in Springfield, MO budgets $240,000 annually for the purpose of reimbursing special education teachers for overtime (which is time "over" what is expected for all teaching staff) spent on fulfilling IDEA paperwork responsibilities. This amount does not compensate this staff for actual overtime spent for this purpose, but it is only a token acknowledgement of the additional effort required to address the excessive burdens imposed by the current statutes.**
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> **The Springfield R-12 School District also budgets $25,000 annually for the purpose of hiring substitutes to allow special education teachers up to two days annually to devote only to IDEA paperwork requirements. It is expected that such staff spend a significant portion of every day for this purpose, but the substitutes are often needed when staff become overwhelmed by the paperwork burdens.**
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> **The Springfield R-12 School District has invested in excess of $250,000 on computer hardware/software in the past 4 years and the Columbia Public Schools in excess of $130,000 in the same time frame to provide special education teachers with the tools needed to allow them to meet the paperwork burdens imposed by the IDEA as efficiently as possible.**

A special education teacher survey was conducted in the spring of 2001 in the Columbia Public School District to determine how to reduce stress and provide relief to special educators. Responses indicated an overwhelming request for assistance with paperwork and additional student materials. In partial response to the survey, the district hired four full-time traveling secretaries at the cost of $69,834. Their sole function is to offer clerical assistance including sending out legal notices, reproducing copies of paperwork for parents and filing.

- **An additional strain on teachers and drain on resources comes as a result of public schools being the only zero reject agency in the nation. Suggestions for collaboration are fine in spirit but insufficient in practice. When money runs**

out in the budgets of agencies such as the Department of Mental Health and Division of Family Services, services are terminated. When an agency feels a family is not cooperating or staff of the agency is not trained to deal with a situation, families are turned away. Children are complex human beings. The well being of our nation tomorrow depends on the total well being of our children today. Children bring issues to school that are well beyond the scope of training for an educator. The concept of collaboration needs to be replaced with mandated services for children and shared partnerships with schools for the benefit of children. An example of the nature of the problem is demonstrated in the following scenario of an actual event. A young man was becoming increasing aggressive at home, school and in the community. His behaviors were dangerous to himself and endangered others. His parent, in collaboration with the school, admitted him for evaluation and treatment at a crisis treatment center operated by the Department of Mental Health. After 24 hours, the mental health worker called a meeting with the parent and special educator. The mental health worker reported they were unprepared and lacked specific training to deal with the severity of the condition of the child at the mental health center even on the lock treatment ward. Consequently, they would not be able to serve the child. The child returned home that evening and to public school the next day. The question is, "If agencies whose function it is to address the mental health needs of persons within a community are challenged beyond their expertise, what good does it do the child to be returned

to a far lesser restrictive environment under the supervision, instruction, and care of those with little or no training in the area of mental health." This is clearly a case where mandated zero reject on the part of both agencies could potentially have resulted in a combined treatment-education plan to improve the mental health condition of the child and readiness for continued academic progress.

Summary

Special education works well for the vast majority of students with special needs. We must preserve what works and fix what doesn't through common sense reform. The Achilles heel of special education is comprised of complex and inter-related issues. With our sites clearly set on student outcomes, the heart of the problem and the heart of the solution rest with preparing and retaining quality special educators in sufficient number to meet the needs of a diverse population of students with disabilities. Without the teachers, we can turn out the lights and go home. In October 2000, The Council for Exceptional Children (CEC) published a report entitled Conditions for Special Education Teaching: CEC Commission Technical Report. The informants represented a variety of stakeholders. The conclusions are enlightening. Special education teachers leaving the field combined with fewer pre-service teachers being interested in pursuing a career in special education is at crisis level in our nation. We must respond with real answers to real concerns. According to the CEC publication Bright Futures Technical Report-Part 5,

No barrier is so irksome to special educators as the paperwork that keeps them from teaching. The overwhelming requirements of paperwork were ranked as the third most important concern (out of a list of 10 issues) coming in behind caseload and time for planning. While special educators understand the need for the IEP, both as an educational guide and legal document, they struggle with all the time the process requires.

As special educators we wear many hats. We are required to be case managers, consultants, classroom teachers, secretaries, and disciplinarians…

My frustration is trying to be "all things to all people". I am supposed to keep perfect paperwork, collaborate with regular educator teachers, train and grade peer tutors, keep in constant contact with parents, and still find time to teach my students!

The most effective way for Congress to improve the quality of special education is to increase and protect the time special education teachers have for collaboration with regular educators and for direct instruction with children. This would go a long way toward insuring an adequate number of special educators in the future. Necessary components of the solution include:

- **Reduce the excessive paperwork burden that materially detracts from available planning and instructional time.**
- **Provide full funding to employ a sufficient number of appropriately trained special educators and to purchase specialized materials and equipment without diminishing the quality of education for all children.**
- **Revise due process procedures to include regulations (mandatory disclosure of issues, mediation, time limits and incentives for advocacy agencies to resolve issues) and protections (frivolous lawsuits, harassment, etc.) that promote trusting, positive, long-lasting**

relationships with parents and prevent catastrophic drain of finite educational resources.

- **Designate additional social service agencies, such as the Department of Mental Health, as zero reject agencies to act in partnership with public schools on behalf of children.**
- **Continue to fund effective existing programs and encourage the creation of additional programs for children in poverty, or who are otherwise at-risk of failure in school, to prevent the over-identification of students with disabilities. Effective existing programs would include, but not be limited to, Head Start, Parents as First Teachers, First Steps, Title 1, and programs for migrant workers and homeless children.**