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Testimony
of the
Pennsylvania State Education Association
Public Hearing on House Bill 2438

Presented to the
House Subcommittee on Special Education

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by
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PSEA Treasurer



Good morning Chairwoman McIlvaine Smith, Chairwoman Rapp, Speaker O'Brien and members of the House Subcommittee on Special Education. I am Jerry Oleksiak, a special education teacher with more than 30 years of experience in the Upper Merion Area School District and the Montgomery County Intermediate Unit. I am currently on leave from my teaching position and serving as the Treasurer of the Pennsylvania State Education Association. I am also joined today by Bernie Miller, Director of Education Services with PSEA. On behalf of PSEA's more than 187,000 members, I want to thank you for this opportunity to offer our association's testimony on House Bill 2438.

PSEA recognizes the importance of balancing the concerns and interests of educators, schools and parents when establishing how best to meet the educational needs of exceptional students in the Commonwealth. We believe that the federal government, the United States Supreme Court and Pennsylvania's State Board of Education have found that balance regarding which party bears the burden of proof in a dispute regarding special education services.

The issues and implications of placing the burden of proof on the school district in all special education cases as would be required under House Bill 2438 are numerous. PSEA's position is that the United States Supreme Court, in Schaffer v. Weast, was correct in holding that the burden of proof should be placed upon the party filing for due process.

Under the Schaffer case, in situations where the school district requests a due process hearing, the district has the burden of proving why they are seeking a change in the student's IEP. Similarly, when a change of placement is proposed by the school district in a due process hearing, the district must provide all relevant data and establish how the district will meet the student's needs in the proposed placement; it must detail the appropriate supplementary aids and services it has offered in the current placement as well as those services needed to support the proposed placement; and it must determine which school members of the IEP team will ensure that the student has an opportunity to make meaningful progress. These same burden of proof requirements should apply in cases in which it is the parents who request due process concerning a change in the IEP and/or placement.

In support of our position, we note that in working on the recent version of Pennsylvania's Chapter 14 special education regulations, the State Board of Education carefully considered this very issue. In that consideration the Board determined that our state should abide by the Supreme Court's determination in the Schaffer case. Specifically, the burden of proof issue was discussed at roundtables, hearings, and through testimony during which advocates raised many of the same arguments they are raising now in support of this legislation. After careful deliberation the State Board, like the United States Supreme Court, took the position that the burden of proof should fall on the party who requests due process. It is a decision with which we agree.

If the Legislature acts to nullify the action taken by the State Board of Education, we are concerned that there will be a dramatic increase in the number of due process hearings, leading to an inordinate amount of time and resources that would be spent to prepare for and participate in due process hearings. In our view, this would cause a diversion of staff and resources away from educating a group of special-needs students who can least afford such a diversion.

We are particularly concerned that, if House Bill 2438 is approved, in those rare cases where parents have repeated differences with the school members of the IEP team they will be encouraged to litigate such differences, going directly to the courts instead of attempting to seek resolution through the IEP process and cooperative collaboration with school staff.

Finally, we note that IDEA was revised in 2004 to reduce the number of reevaluations a district must perform per year at the parent's request. This change was made to prevent an abuse of the re-evaluation process while still preserving the right of parents to request re-evaluations at reasonable intervals. This change is an example of the importance which Congress has placed upon the need to ensure that instruction and resources are not diverted away from students in situations where parents continually question the decisions of educators. We submit that this fundamental approach to the balancing of parental rights against the needs of the districts to focus upon educating special education students will be thwarted if the

proposed bill is approved and the Legislature shifts the burden of proof to districts in all cases.

We hope that the information you have heard related to the trends in federal government and the implications at the local level will help you to understand our position of opposition of House Bill 2438.

Thank you for the opportunity to speak with you today. Bernie and I look forward to answering your questions.