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Letter to TEA Demands End of Unlawful Special Education Cap
Policy Has Harmed Tens of Thousands of Children for 12 Years

AUSTIN—Today the Coalition of Texans with Disabilities (CTD) sent a letter to the Texas Education Agency (TEA) and its Commissioner Mike Morath demanding that Commissioner Morath follow through on his public promises to permanently eliminate the arbitrary 8.5 percent cap on the number of students who will receive special education services in Texas.

Though the Commissioner and TEA have promised to eliminate the 8.5 percent policy, CTD is unaware of any steps they have taken to do so. “The time for action is now,” said Kym Davis Rogers, Staff Attorney at Disability Rights Texas who is serving as counsel for CTD.

As recently detailed in a series of articles in the *Houston Chronicle*, Commissioner Morath and TEA’s continued adoption and current use of the 8.5 percent cap, which TEA originally implemented in 2004, has resulted in the systematic denial of special education services and support to tens of thousands of Texas’s special education eligible students.

At recent listening sessions, hundreds of parents and students attended to share their stories of delay and denial of the special education support and services they are legally entitled to receive and the devastating effect these illegal denials and delays have had on both the children and their families. Many educators joined the parents and shared how they were instructed to delay and deny evaluations and eligibility determinations for special education in order to comply with the 8.5 percent cap.

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These denials are shown in the objective data. Specifically, since TEA's adoption of the 8.5 percent cap, the rate of Texas students receiving special education dropped from the longtime national average of approximately 13 percent to 8.5 percent. This drop was the direct result of teachers and school district administrators, many of whom now openly admit as much, denying and delaying special education and support to children with disabilities because of the 8.5 percent policy.

Additionally, English language learners (ELL) have been significantly impacted by the cap, as they now are three times more underrepresented in special education than they were in 2004. The 8.5 percent cap has unfortunately resulted in Texas falling to the very bottom of all states at providing services and support to its children with disabilities.

"The 8.5 percent policy must end now because it violates both state and federal law by operating as a cap on the number of students who will receive special education and thereby results in school districts denying special education services to eligible students," said Jason W. Billeck, Partner, Winston & Strawn LLP, who is serving as pro bono counsel for CTD. "This policy is contrary to the laws and values of our country to protect our vulnerable children with disabilities."

"Our organization is committed to the elimination of the special education 8.5 percent cap because the children and families of Texas deserve, need, and are legally entitled to better," said Dennis Borel, Executive Director of CTD.

CTD is hopeful Commissioner Morath and TEA will honor their promises and immediately take action to quickly eliminate the 8.5 percent cap. If they refuse to do so, DRTx and Winston & Strawn LLP intends to file a lawsuit on behalf of CTD to seek appropriate relief.

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Disability Rights Texas (previously named Advocacy Inc.) is the federally designated legal protection and advocacy agency (P&A) for people with disabilities in Texas. Its mission is to help people with disabilities understand and exercise their rights under the law, ensuring their full and equal participation in society.

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