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Interested Party Testimony on House Bill 498  
House Education Committee  
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Chairman Brenner, Ranking Member Fedor and members of the House Education Committee, thank you for the opportunity to submit this written testimony as an interested party in consideration of House Bill 498 (HB 498). As the federally authorized and state designated system to protect the rights of Ohioans with disabilities, including children and adults with behavioral disabilities, Disability Rights Ohio (DRO)<sup>1</sup> brings a unique perspective to bear on the issues presented by this bill.

There are many concerns with this legislation both substantively and procedurally. In particular, the limited time for discussion and review of the various amendments by interested parties if the bill is “fast tracked” during the lame duck session causes us great concern. Our many substantive concerns include a lack of evidence based practices for validation of any threat posed by the student; no requirement that appropriate behavioral health services be provided or paid for by the school – critically important given the wait list for services in many jurisdictions; no requirement that qualified mental health professionals decide when the student returns to school; and the lack of alternative educational services for children who are excluded from school.

Many if not all of the children who are affected by the bill are children with disabilities, who are ensured a Free Appropriate Public Education under the federal Individuals with Disabilities Education Act (IDEA), and also protected against discrimination based on their disability under Section 504 of the Rehabilitation Act. These laws also require team based and evidence based decisions about educational choices.

The primary concern I wish to address today, however, is the new provision that would extend the power under the state’s involuntary commitment law to allow school administrators or school psychologists to take a child into custody and transport him or her to a treatment facility. Indeed, as drafted this provision is not even limited to students but rather it could allow a school administrator or school psychologist to involuntarily

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<sup>1</sup>DRO is designated by the Governor as the Ohio protection and advocacy system as required by the Protection and Advocacy for Individuals with Mentally Illness Act, as amended, 42 U.S.C. § 10801 *et seq.* Pursuant to this Act, DRO has authority to “...pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness who are receiving care and treatment in the state....” 42 U.S.C. § 10805(a)(i)(B).

commit other individuals who they might deem a threat, including teachers, parents and coaches.

Under current law, there are several categories of professionals who have the ability to take a person into custody and transport the person to the hospital if there is reason to believe that the person is a “mentally ill person subject to court order” and “represents a substantial risk of physical harm to self or others” if allowed to remain at liberty pending examination. These include a psychiatrist, licensed clinical psychologist, licensed physician, health officer, parole officer, police officer, or sheriff.

It is impossible to emphasize enough the extraordinary nature of this power, which allows detention against the will of the individual in a secure psychiatric facility without a court hearing. It is critically important that the category of professionals with this extraordinary authority to “pink slip” have experience working with individuals with chronic and serious mental illness, a comprehensive understanding of the law regarding the rights of individuals with mental illness in the commitment process, and the ability and willingness to transport the individual to a hospital. The law requires a person taking another into custody to provide a written statement to the hospital explaining why they believe the person is a mentally ill person subject to court order and represents a substantial risk to self or others, and stating the circumstances under which the person was taken into custody.

The ability to provide appropriate written documentation is essential to protecting the legal rights of individuals with mental illness. The Ohio Supreme Court found in *In re Miller*<sup>2</sup> that the written statement given to a hospital when a person is taken into custody is a requirement for the initiation of an emergency involuntary commitment, in that it ensures the existence of some probable cause to support the involuntary commitment of a person who may be mentally ill and in need of court-ordered hospitalization.

Similarly, in *In Re Mental Illness of Boggs*<sup>3</sup>, the Ohio Supreme Court reversed a civil commitment order because the factual allegations in the affidavit did not support a finding that there was probable cause to believe the appellant was a mentally ill person subject to hospitalization by court order. These and many other decisions make clear that emergency hospitalization under § 5122.10 must begin with a written statement demonstrating the existence of some probable cause to support the involuntary commitment, and that professional evaluation is key to that determination.

Emergency detentions are essentially a balance between a person’s liberty interests and the general public’s safety and welfare. As there is no judicial review prior to the involuntary detention, it is important that expanding the authority to initiate emergency detention to additional individuals be considered with caution. We have very serious concerns with such further expansion, given the lack of mental health experience,

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<sup>2</sup> *In re Miller* 63 Ohio State 3d 99 (1992)

<sup>3</sup> *In Re Mental Illness of Boggs*, 50 Ohio St. 3d 217 (1990)

training, and professional qualifications of the school personnel identified in the amendment.

Legislation of this nature should focus on the rights and well-being of the individuals subject to its effect. Expanding the list of persons who can conduct these highly sensitive determinations increases the likelihood of error affecting the rights of a population of individuals already subjected to much stigma and stereotyping. The burden should be on the proponents of this legislation to demonstrate a compelling need to shift the balance that the law currently strikes between individual liberty concerns and the legitimate interests of the state as articulated in the involuntary commitment process.

Ohio's mental health system is stressed to capacity, so extending the pink slip authority to any new categories of professionals that are not narrowly drawn, highly credentialed, and with significant experience working with individuals with serious mental illness is not sound policy. DRO urges the Committee to proceed with caution in effecting such change.

Thank you again for the opportunity to provide this written interested party testimony. If you have any questions or want to discuss this matter further, please contact me at your convenience.