



Testimony of Brenda George, MS, OTR/L

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Chairman Cupp, Ranking Member Phillips, and members of the House Finance Subcommittee on Primary and Secondary Education, thank you for the opportunity to offer testimony on House Bill 64, the state operating budget. My name is Brenda George and I am an occupational therapist and the pediatric special interest section coordinator for the Ohio Occupational Therapy Association (OOTA). I have been in practice in Ohio for 38 years, with 27 years' experience in the school setting. I am here today to discuss some much needed changes that we feel should be added to the budget in order to dramatically improve the delivery of services to students with special needs and address some challenges that OT's face when working in the K-12 setting.

Recently, the Ohio Department of Education completed a five-year review of the operating standards for the office of exception children; OOTA has worked with ODE for years to improve these standards and address many outstanding issues, however the latest rule revision did not go far enough. We are concerned that local education agencies are not following requirements in the Ohio Practice Act as it pertains to occupational therapist (OT) and occupational therapy assistant (OTA) supervision guidelines. Additionally, the caseload ratios for OT's and other providers have not been updated since the 1980's. ODE cites a section of temporary law from a previous operating budget as setting the caseload in statute. ODE has been encouraging LEA's to transition from a caseload model to a workload model, which would provide greater transparency and accountability for OT's and other providers, however the timeframe is unclear.

OOTA supports the transition to a workload model, and feels that the following amendments would dramatically improve the delivery of services to children with special needs and allow OTs to provide prevention services to at risk general education students. This would decrease the numbers of students receiving special education and related services, thus reducing the cost to the state. We respectfully request the following budget amendments be adopted in order to improve service delivery in K-12 setting:

- *Add language allowing the Ohio Department of Education to adjust Occupational Therapy caseloads in the Ohio Administrative Code;*
- *Add language to require all school districts to transition from a caseload model to a workload model by the 2017/18 school year;*
- *Provide funding to the Ohio Department of Education to allow the department to contract with a private sector partner to design and develop a workload calculator program or app, based on a recently completed ODE study, for OT's and other providers to utilize when working in the field;*
- *Add language requiring school districts and ESC's to adhere to supervision guidelines as set by the Occupational Therapy, Physical Therapy, and Athletic Trainers Board.*

Changing topics, last school year, the State Teacher's Retirement System (STRS) notified school districts that occupational therapists, occupational therapy assistants, and other providers who hold a pupil services license must be members of STRS. The bulletin said "contracting with an outside agency or individual to provide these services does not release the employer of their obligations to submit contributions on earnings to STRS Ohio." Occupational therapists and occupational therapy assistants who are traditional employees of a school district have always been members of STRS. However, prior to last year, those OT's and OTA's who perform services under a contract with a school have not been required to join STRS.

STRS effectively broadened the definition of ‘employee’, ‘employer’ and ‘employed’ to include contractors performing services within a school. Contract OT’s and OTA’s are typically self-employed or employees of a private firm. Often, these providers already have private retirement accounts, such as a 401k with an employer match paid by their firm. Further, these OT’s and OTA’s contribute to social security. This change by STRS is causing a number of challenges for OT’s and OTA’s and school districts in terms of contract negotiations. Some school districts are requiring an OT or private firm to deduct and pay both the employer and employee share. Some OT’s have seen their incomes cut by as much as 35% as they must now pay into STRS. And since its tax season, I’m not sure how all of this will play out, as the IRS considers these individuals independent contractors not eligible for membership and benefits of a public retirement system.

This change has already led to fewer OT’s and OTA’s willing to contract with school districts. Many school districts and ESC’s attempting to hire occupational therapy staff for the current school year have struggled to fill positions. This has led to disrupted service delivery for students who require therapy services. Contractors are not employees and this policy should be reversed before more harm is done. In last year’s MBR bill (HB 483), language was added to address a similar issue with non-public schools. We feel a narrow exemption can be put into law to clarify that therapy providers performing services under a contract, and who are considered independent contractors by federal statute, are not eligible for STRS membership.

Finally, I’d like to discuss issues that OOTA has with the Medicaid in Schools Program (MSP). I know that this isn’t fully within the subcommittee’s jurisdiction, but MSP has been growing and the proposed expansion of services in HB 64 could have a significant impact on Ohio’s schools. Currently, 580 school districts in Ohio participate in MSP; more than 61,000 students are covered. MSP is administered by ODE in collaboration with the Ohio Department of Medicaid. This program allows school districts to provide therapy and other services to children on an IEP. OOTA has a number of concerns with MSP and we encourage caution regarding the proposed expansion of the program in HB 64.

MSP needs to be cleaned up, improved and consistent across the state before adding new, unskilled and unlicensed providers to the Ohio program. There are inconsistencies with documentation and claims processing throughout the state. Further, coordination between traditional Medicaid and ODE policies and procedures is very confusing and inconsistent for those actually providing and documenting the services. This leads to unintended consequences. There simply has not been an effort to reach out to regulatory bodies, therapy service providers, and other stakeholders.

If unlicensed providers are added to MSP, then who will ultimately be responsible for supervision? There are strict ethical issues around delegation and the use of unlicensed personnel by licensed providers. Adding supervision and oversight responsibilities to OT’s and other providers could result in a reduction in service delivery and new costs to the state. As I mentioned above, there are already issues with caseloads and service delivery in schools that need to be addressed.

There are varying estimates regarding how much this expansion of MSP will draw down—some billing agencies have estimated that the program will grow by \$7 million per fiscal year, while others are projecting growth upwards of \$200 million. Further, some MSP billing agents have also expressed concern that expansion of the program could trigger an audit by CMS, which Ohio would not likely pass. This could result in penalties against and repayment of funds by school districts.

In closing, I urge the General Assembly to take a serious look at MSP and look for ways to improve service delivery and accountability. Thank you for your time and consideration, and I would be happy to answer any questions you might have.