Public Comment 23

Original: 2122

COMMENTS ON EARLY INTERVENTION REGULATIONS

JULY 25, 2000

GOOD MORNING
MY NAME IS ELYSE ROSEN. I HAVE BEEN INVOLVED IN EARLY INTERVENTION SINCE 1975 AS A PROVIDER, AN ADMINISTRATOR, A CASE MANAGER, A TRAINER, A CONSULTANT AND MOST IMPORTANTLY, A PARENT OF A CHILD WHO RECEIVED SERVICES. HOWEVER, MY HAT TODAY IS AS THE DIRECTOR OF MARC CHILDREN'S SERVICES, AN EARLY INTERVENTION PROVIDER AGENCY WHICH SERVES OVER THREE HUNDRED AND FIFTY FAMILIES IN MONTGOMERY COUNTY.

I AM SURE AS MY COLLEAGUES BEFORE ME HAVE STATED, THAT WE HAVE SIMILAR CONCERNS ABOUT THE PROPOSED REGULATIONS. SO IF I REPEAT WHAT HAS BEEN SAID BEFORE ME, I KNOW THAT THIS IS PROBABLY WHAT SHOULD HAVE BEEN SAID AND HEARD BY ALL.

WITH ANY PROVISION OF SERVICE THE MOST IMPORTANT ELEMENT ARE THE PEOPLE. WITHOUT COMMITTED, CARING AND TRAINED PERSONNEL, WE CERTAINLY CANNOT MEET THE NEEDS OF OUR FAMILIES. EXPERIENCE AND RESEARCH HAS EMPHASIZED THAT WE MUST FIRST ESTABLISH A TRUSTING RELATIONSHIP WITH THE FAMILY AS THEY TOO MUST FIRST ESTABLISH A TRUSTING RELATIONSHIP WITH THEIR CHILD. WITH THAT, THE FOUNDATION FOR LEARNING TO LEARN AND LEARNING TO PLAY IS LAID.

FOR CHILDREN AND PARTICULARLY FOR OUR CHILDREN, LOVE IS NOT ENOUGH. THEREFORE IT IS IRRESPONSIBLE FOR US NOT TO REQUIRE ANY TEAM MEMBER WITH A KNOWLEDGE BASE THAT INCLUDES INFANT DEVELOPMENT AS A PREREQUISITE SKILL OR COMPETENCY. THIS IS ESSENTIAL FOR THE SERVICE COORDINATOR WHO MUST BE ABLE TO EXPLAIN TO FAMILIES IN A VERY FUNCTIONAL AND RESPECTFUL WAY, AT CRITICAL TIMES, WHAT IT IS THAT IS THE FAMILY'S PRIMARY CONCERN. FOR FAMILIES KNOWING WHAT TO ASK FOR AND WHERE TO GO TO GET IT, IS THE BEGINNING OF THEIR JOURNEY THROUGH A VERY COMPLEX AND OFTEN FRUSTATING SYSTEM.

ONCE WE KNOW WHAT FAMILIES NEED, THEN WE LOOK AT WHO WILL PROVIDE IT. THE PROPOSED REGULATIONS ARE SHORTSIGHTED IN ALLOWING FOR A BROAD RANGE OF QUALIFICATIONS, IN PARTICULAR FOR SERVICE COORDINATORS AND EARLY INTERVENTIONISTS. ALTHOUGH THEY DO PROVIDE FOR TRAINING, A REVIEW OF RETENTION RATES OF EARLY INTERVENTION PERSONNEL WILL SHOW THAT BY TIME PEOPLE ARE TRAINED THEY HAVE MOVED ON AND NOT NECESSARILY IN THE SAME FIELD. IT

WOULD PAY US IN THE LONG RUN TO BRING IN MORE QUALIFIED PEOPLE AT THE BEGINNING OF THE PROCESS AS THEY USUALLY GET MORE SATISFACTION , PROVIDE BETTER SERVICES, AND STAY LONGER. I WOULD ARGUE THAT EVEN CERTIFIED ELEMENTARY LEVEL TEACHERS HAVE NOT HAD ENOUGH EXPERIENCE TO WORK WITH INFANTS AND TODDLERS. IF FACT I WOULD FURTHER ARGUE THAT PRESCHOOL TEACHERS ARE NOT EVEN WELL VERSED IN ISSUES REGARDING TYPICAL DEVELOPMENT OF INFANTS AND TODDLERS.

I WOULD THEREFORE OFFER COMPETENCY BASED TRAINING OR A COMPARABLE EVALUATION OF COMPETENCIES COULD BE USED FOR OR SUBSTITUTED FOR PRE-SERVICE TRAINING FOR ALL STAFF. I WOULD SUGGEST THE "SWEAT" CURRICULUM, SLEEPING, WALKING, EATING AND TALKING. BUT ON A MORE SERIOUS NOTE, OTHER TOPICS COULD INCLUDE OUTCOMES/IFSP DEVELOPMENT, WORKING WITH PARENTS AS ADULT LEARNERS, FIRST AID/CHILDPROOFING THE HOME, I IDENTIFYING/ UTILIZING COMMUNITY RESOURCES, CONSULTATION IN NATURAL ENVIRONMENTS AND THOSE ALREADY MENTIONED IN THE REGULATIONS IN SECTIONS 4226.36 AND 4226.37.

ANOTHER AREA THAT I HAVE COMMENTS IS THAT OF SERVICE COORDINATION. IN COUNTIES WHERE THERE IS CIVIL SERVICE CASE MANAGERS, THERE IS AN INHERENT CONFLICT OF INTEREST WHETHER OVERT OR NOT. THIS IS OBSERVED PARTICULARLY WHEN THERE IS AN ISSUE REGARDING FUNDING AND/OR LEVELS OF SERVICE. THERE IS ALSO THE MATTER OF CASELOAD SIZE. IN COUNTIES WHERE THE CIVIL SERVICE PROCESS IS SLOW, CASELOADS ARE ALWAYS TRANSFERRED OR ADJUSTED UPWARDS. IT WOULD BETTER TO HAVE EARLY INTERVENTION SPECIFIC CASE MANAGEMENT OR WEIGHTED CASELOADS, BASED ON INDIVIDUALS NEEDS. ANOTHER APPROACH WOULD BE TO UTILIZE THE SERVICE COORDINATOR AS BEING FROM THE PROFESSION MOST IMMEDIATELY RELEVANT TO THE INFANT'S OR TODDLER'S OR FAMILY'S NEEDS. THIS HOWEVER, IS QUITE A BURDEN FOR AN EDUCATOR OR THERAPIST, PARTICULARLY IN VIEW OF THE SCARCITY OF THESE TRAINED INDIVIDUALS. IN ANY EVENT, THE PREVIOUSLY SUGGESTED GUIDELINES OF A THIRTY-FIVE FAMILY CASELOAD OR LOWER WOULD SEEM TO BE ACCEPTABLE IF IT, TOO, WERE WEIGHTED WITH NEW FAMILIES, HIGH/LOW ACTIVITY FAMILIES, AND CHILDREN IN TRANSITION.

I APPRECIATED THIS OPPORTUNITY TO OFFER MY COMMENTS. I AM WILLING TO PARTICIPATE IN ANY FURTHER DISCUSSIONS OR TASK FORCES RELEVANT TO THE AREAS I HAVE MENTIONED. I CAN BE REACHED BY TELEPHONE AT MARC CHILDREN'S SERVICES, 610-265-4700 OR BY MY PERSONAL E-MAIL AT EZEIEIO@AOL.COM. THANK YOU. ELYSE S. ROSEN

Original: 2122

Public Comment #28

LICC

Pittsburgh/Allegheny County
Early Intervention
Local Interagency Coordinating Council

Agencies: Pittsburgh Public Schools
Allegheny Intermediate Unit
Allegheny County Department of Human Services
Allegheny County Health Department

July 25, 2000

RECEIVED
2000 AUG -1 PM 2:34
REVIEW COMMISSION

Mr. Mel Knowlton
Department of Public Welfare
P.O. Box 2675
Harrisburg, PA 17105-2675

Dear Mr. Knowlton:

As the incoming Co-Chairs of the Pittsburgh/Allegheny County LICC, we are writing to express our support for the SICC's recommendation that the Department of Public Welfare extend the public comment period for the early intervention regulations beyond the 60 days as published in the June 3rd "Pennsylvania Bulletin".

Our LICC does not meet during the summer months, and we would like the opportunity for our members to meet and be able to discuss and comment on the department's proposal. At the state early intervention conference in Hershey, we were told that the LICCs were charged with advising and commenting on state early intervention policy. Yet, we were not advised of the release of the regulations, were not sent copies of the regulations, and now we are not given the opportunity to comment on the regulations.

We are also requesting a wider dissemination of the proposed regulations to both professionals and families alike. While you have stated that these draft regulations were developed in conjunction with stakeholders, it is worth noting that the last stakeholder meeting was over two years ago, before the federal regs were even released. Also, the composition of the SICC is vastly different than it was two years ago, when parents and families had much greater representation on the Council. An extended comment period would give the SICC time to familiarize themselves with the proposal, as well as professionals and families who may be newer to the system.

There are several significant issues with regard to the proposed regulations, and we believe that it is in the best interest of those children we serve to take the time to ensure that their needs are being met according to the intent of the law.

Thank you for your consideration. We look forward to a response.

Sincerely,

Jane Pilditch Shannon Rizzo Stephanie Scanlon Sharyn Thompson
Co-Chairs, Pittsburgh/Allegheny County LICC

c/o The Alliance for Infants and Toddlers Birmingham Towers, Suite 705 2100 Wharton Street Pittsburgh, PA 15203
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Original: 2122

PROPOSED REGULATIONS TO GOVERN THE INFANTS AND TODDLERS WITH DISABILITIES PROGRAM TESTIMONY

July 25, 2000

Good morning. My name is Ruth Landsman, and I am the Director of Parents Exchange, an information, referral and advocacy service. I was the president of SNAP, the Special Needs Alliance of Parents when Act 212 was passed in Pennsylvania in 1990. I commend the Department for issuing regulations but must share my concern over the process this endeavor has taken. Despite the fact that a very active stakeholders group work diligently on draft regulations some three years ago, the Department chose to ignore many of their concerns and recommendations in the proposed regulations which were issued nearly two months ago. As a participant in a number of "stakeholder" meetings which both reviewed a number of previous drafts and then continued to meet to discuss priorities needed to be addressed in the regulations.

I commend the Department for wisely choosing to incorporate the actual language from the federal regulations in some areas. Unfortunately, the Department only did so part of the time and, perhaps, inadvertently omitted some of the federal protections. Many of the practices and protections established in the long history of early intervention in Pennsylvania, predating the Federal mandate by nearly two decades, have been lost in this process as well. I will highlight some the most important issues but the list is far longer than time will allow me to present today. My comments represent my experiences with several hundred families per year for more years than I care to admit to at this time...

The service coordinator and their skill level represents the families best opportunity to secure adequate and appropriate services for their child and to protect their procedural safeguards. The minimum credentials for service coordinators are far too low to insure that these important functions are performed by qualified staff. The Department took steps to promote a competency based approach to setting minimum requirements when it contracted with Dr. Phillipa Campbell several years ago to develop such a training curriculum. Having taken this step, the regulations should conform this established standard and require a combination of education, experience and training which will assure that service coordinators have these competencies.

It is of great concern that the role of an early interventionist has been included in the regulations. This role was first mentioned during the discussions concerning the Medicaid Infant and Toddler Waiver. Given the Federal requirements for the minimum state licensing standards for qualified personnel, this role either duplicates the function which should be held by service coordinators or puts into the purview of less qualified individuals requiring less training and /or experience than the current special educator. While I realize there may be shortages of qualified personnel to fill this growing need, it is important not to extend beyond the time it would take to meet the existing standards (a bachelor's degree) for staff currently employed in the field to acquire. We do, at the same time, applaud the ongoing training requirements albeit with some wariness of the cost to providers in staff hours and actual course costs.

Because the Federal requirements exist for Multidisciplinary Evaluations to be completed along with IFSP's within 45 days of referral to the system the inclusion of a screening process

should be deleted. If the screening were to take place, some children would be denied a full MDE as is required by federal law. Besides denying the MDE, this regulation would not even require that the family receive notice that it can challenge such a decision concerning their child's potential eligibility for early intervention services. Other omissions include the elimination of a description of the health component of the multidisciplinary evaluation (MDE) and a commitment to provide a free independent evaluation to families who have requested a hearing. Also troubling is the fact that the draft of these regulations fail to mention the requirement that an IFSP be completed during the same 45 day time period from referral..

The regulations should state that, either the service coordinator or another County representative be present at the IFSP meeting, with the authority to commit the county's resources and complete the IFSP at the meeting. Without this presence, the IFSP Team, which includes the family, does not have the authority to develop the IFSP at that meeting. This has been a serious defect in the process in many areas of the state for quite a long time and accounts for one of the most consistent issues I have encountered.

While the federal regulations provide that IFSPs should be implemented "as soon as possible" The Department has agreed both through the Sebastian I settlement in Philadelphia and the complaint process in Montgomery County that a 14 days is an appropriate time frame in which to begin services. In at least one of the earlier drafts the Department included this specific implementation deadline of fourteen (14) days and I am troubled, in this latest draft, by its removal from consideration. Without this specificity a child might not actually starts receiving

services from the county in any . Children in a number of counties have been significantly delayed in actually getting the services that their IFSP teams had agreed they need. A specific deadline which is included in the state regulations gives providers, counties and families a clear understanding of what is expected, and permits the Department to hold counties to a clear standard.

The regulations should include the complaint management system as it is implemented in PA. This system is available at no cost to the family and is designed to assist families in getting their child's needs met. The language describing the process can be taken directly from the Federal Regulations as many other sections have been. This would also serve to inform families of the timelines for filing various complaints, in some cases even after their child has left early intervention, as well as the assistance they could and should expect from the regional offices.

I appreciate this opportunity to share concerns about major issues containt\ed in the draft regulations promulgated by the Department. Clearly much more work is needed to assure that they address the critical needs of families for protections as well as guidance to Counties and providers of services. In addition to more work on these regulations being necessary, I would like to suggest that input from a broader representation of the early intervention community is also necessary. Because of the timing of the issuance of these regulations, very little consideration could be given to the document by the local interagency coordinating councils. A byproduct of this timing is the fact that many who will be seriously impacted by these regulations will miss even a passing consideration if the comment period ends in the next week as scheduled.

I would therefore ask that the comment period be extended through October of this year to allow each interagency coordinating council to meet and discuss the document and give feedback from their local perspectives. There has been much time and effort put into this endeavor and there is a great deal of work yet to be done. I hope you will take the comments presented at the three hearing as well as input from the local ICC's to continue the process and build a set of regulations which will support the provision of early intervention those of us who worked on the vision leading to Act 212 shared in the late 1980's.

Public Comment 19

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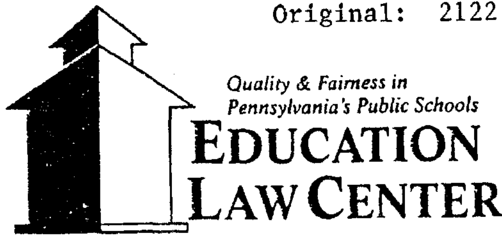

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TESTIMONY OF THE EDUCATION LAW CENTER – PA
REGARDING PROPOSED REGULATIONS TO GOVERN
THE INFANTS AND TODDLERS WITH DISABILITIES PROGRAM

July 25, 2000

Good morning. My name is Janet Stotland, and I am the Co-Director of the Education Law Center. I participated in a number of "stakeholder" meetings, and reviewed a number of drafts, before the lengthy internal review process on these regulations began. In the latest proposal, the Department has wisely chosen not to characterize the federal regulations, but to incorporate the exact federal language. This is an improvement. What is not an improvement is its decision to delete certain PA specific protections and processes, and, in some instances, not to include all of the protections that exist in federal law. For an exhaustive review of my concerns, and the legal authority for each, I attach the written comments that I have already sent to the Department. In this testimony, I will highlight a few of the most important issues.

WHAT'S MISSING

The federal regulations provide that IFSPs should be implemented "as soon as possible." In a much earlier draft, the Department proposed a specific implementation deadline of fourteen (14) days, which we believe is reasonable. That would mean that a child actually starts receiving services within 60 days of his/her referral to the county. Children in a number of counties have been significantly delayed in getting the services that their IFSP teams had agreed they need. In

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Philadelphia, this led to litigation. In Montgomery County, the Regional Office found, in response to a formal complaint, that families were encountering unreasonable delays, and ordered corrective action. A specific deadline gives providers, counties and families a clear understanding of what is expected, and permits the Department to hold counties to a clear standard.

Other important protections that should be restored are: a description of the health component of the multidisciplinary evaluation (MDE); a commitment to provide a free independent evaluation to families who have requested a hearing; protection from liability for surrogate parent volunteers; and authorization for parents to request that a surrogate parent be appointed in "exceptional circumstances." The regulations should also include the complaint management system as it is implemented in PA (this is the process by which parents can request that the Department correct violations of federal and state law).

The regulations should state that, either the service coordinator (as a mandatory member of the IFSP team), or another County representative present at the IFSP meeting, must have the authority to commit the county's resources and complete the IFSP at the meeting. Otherwise, the IFSP Team, which includes that family, does not have the authority to develop the IFSP.

WHAT NEEDS TO BE CHANGED

The screening process should be deleted, as it denies some children a full MDE as is required by federal law. The current proposal would permit a County to determine that a child is ineligible for services as a result of a "screen" which does not comport with the federal requirements for an MDE, and would not even require that the family receive notice that it can challenge such a decision.

There should be no early interventionist position, and therefore there is no need for credentials for that position. The proposed regulations do not describe a principled set of functions for an early interventionist that are discrete from those already performed by other, more qualified personnel. The regulations describe the early interventionist as participating in the development of the IFSP; implementing the IFSP directly; or supervising the implementation of services provided by other early intervention personnel. 4226.55. It is the job of the service coordinator to oversee the completion of the IFSP. Each service in the IFSP (PT, speech, special education, etc.) is the purview of a specific skilled and licensed professional, and cannot, therefore, be performed by a less skilled individual. And as to supervising other highly skilled staff, the early interventionist either doesn't not have the substantive expertise, or is again usurping the coordinating responsibilities of the service coordinators.

In the alternative, if early interventionists are to deliver early intervention services to children, the minimum credentials are clearly inadequate. I have shared with the Department in writing my view that, if it proceeds with this position and this set of credentials, it is in violation of, among other things, the requirement that the state's personnel standards for early intervention be based on the "highest requirements of the state applicable to a specific profession or discipline." 20 U.S.C. Section 1435(a)(9)(B).

The minimum credentials for service coordinators are too low to insure that these important functions are performed by qualified staff. The Department should take a competency based approach to setting minimum requirements – that is, it should analyze the competencies that a service coordinator must have to perform the specific functions required. This is the approach that the Department used in 1997, when it contracted with Dr. Phillipa Campbell. Then it should

determine what combination of education, experience and training will assure that service coordinators have these competencies.

I will leave it to my colleagues who are more expert on the rights and needs of children in foster care to hammer this point home, but the regulations should encourage, to the maximum extent consistent with federal law, the use of foster parents to serve as surrogate parents for children without "parents" to act on their behalf.

Thank you for this opportunity to give you a brief overview of some of my major concerns. I'm sure that you share our goals – to make sure that the Infants and Toddlers Program is as helpful as possible to these children and families, and that it complies with federal law. More work on these regulations is needed if these goals are to be achieved.

July 11, 2000

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Mr. Mel Knowlton
PA Department of Public Welfare
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RE: Proposed Infants and Toddlers Regulations

Dear Mel:

Enclosed you will find the comments of the Education Law Center – PA regarding the above. I'd be happy to discuss any of these matters with you further if you would find that helpful. Thanks for this opportunity for input.

DEFINITIONS

4226.5: The state definitions are drawn, virtually verbatim, from the federal regulations, and are generally fine. I have problems/suggestions with regard to the following:

- County MH/MR program (legal entity) is defined as an entity that "provides a continuum of care for the *mentally disabled*." Given that the I&T population also includes children who are physically impaired and have sensory impairments, that description is inadequate and may confuse or deter some families from asking for services. I would suggest "persons with disabilities."

- The definition of "early intervention services" should include the phase, "including, <u>but not limited to</u>, the following:

- In the definition of "parent," the Department should make clear that no employee of a public *or private* foster care agency can be considered a parent. (This does not include foster parents, who are not, "employees of an agency"; see below for argument that use of foster parents should be maximized).

  Moreover, this definition should make clear that, in certain circumstances, a foster parent is considered to be a "parent" (not just a person who is eligible to be appointed as a surrogate parent). A foster parent is considered to be a parent when: the natural parents' authority to make decisions has been extinguished under

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state law (the regulation should make clear that this means that parental rights have been terminated, or other clear state court action has taken place); the foster parent has an ongoing, long-term parental relationship with the child; the foster parent is willing to undertake these responsibilities; and there is no conflict of interest. 34 C.F.R. Section 303.19(b).

- The Department should also add a definition of "tracking," partly drawn from the 1997 regulations: "A systematic process to monitor the development of infants or toddlers who are at risk for a delay or disability to determine whether they have become eligible for early intervention services."

FINANCIAL MANAGEMENT

4226.12 (Waiver funds): A County does not completely control whether Waiver funds can be expended; that depends on whether there are enough eligible services and eligible children whose parents have agreed to participate. Therefore, the following phrase should be added at the end of the paragraph: "to the extent that eligible services and eligible children can be identified, and the children's parents consent to participate in the Waiver."

4226.13 (Nonsubstitution of Funds). It is appropriate and important to encourage counties to use private and public revenues to the extent possible, consistent with protecting families' rights. However, counties can't be held accountable for not using funds which are not accessible because the parents will not consent to their use. This section should be rewritten as follows:

> (a) Early intervention State funds may not be used to satisfy a financial commitment for services which could have been paid for from other public and private funding sources, so long as the use of those funds is without cost to the families, and the families have consented. A legal entity is responsible for providing all of the early intervention services in the child's IFSP whether or not those services are eligible under the Medicaid program.
>
> (b) Parents cannot be required to apply for Medicaid in order to receive early intervention services. Parents who have private insurance are not required to use their insurance. After being informed of their right to refuse consent, the parents may volunteer to use their insurance only if they will not suffer financial losses, which include, but are not limited to, one or more of the following:
>
> (1) A deductible, or a decrease in available yearly or lifetime coverage, or any other benefit under an insurance policy.

4226.15 (Documentation of other funding sources). For similar reasons, section (a) should be rewritten as follows:

Written documentation that all other private and public sources available to the child and family that can be used without financial loss to the child and family, and to which the parents have consented, have been accessed and exhausted shall be kept with the child and family's permanent legal entity's file. In no case shall a child's early intervention services be delayed in order to secure public or private sources, nor should services included in a child's IFSP be adjusted to reflect available funding sources .

GENERAL REQUIREMENTS

4226.23 (Waiver eligibility). To accurately reflect the Waiver process, I would recommend the following changes in subsection (a): "The legal entity shall ensure that if infants and toddlers until the age of 3 are eligible..., and with the parents' consent, as follows:

4226.24 (Comprehensive child find system): The regulations do not include any reference to the federal requirements that there be a "public awareness program," in addition to a child find system. 34 C.F.R. Section 303.320 requires the system to inform the public about the early intervention program. Moreover, with respect to "child find" itself, the regulations simply pass on to the County the responsibility for these functions, including coordination with and avoidance of duplication among child serving agencies. Clearly, there is an important role for the county, but the state has to create the infrastructure through, *e.g.*, memoranda of understanding. The regulation should state that the legal entity will perform these functions, "with the assistance of the State."

4226.24(f) (timelines): The section is very confusing. It does not make clear that, for a child determined to be eligible for services, the IFSP must be developed within 45 days of referral. [34 C.F.R. Section 303.342(a)]. Under this language, the timeline is satisfied if the child is only evaluated within the 45 day period. And it suggests, at 4226.24(f)(2)(iii), that the multi-disciplinary evaluation (MDE) could be bypassed altogether in favor of a plan for further assessment and tracking, which is also inconsistent with the federal requirements. [See, e.g., 34 C.F.R. Section 303.322(a)(1)].

4226.25 through 4226.29 (Screening): I believe this screening process is inconsistent with the federal regulations. Those regulations state that, within 45 days of the date the "public agency" (here the county) receives a referral, the public agency shall, "[c]omplete the evaluation and assessment activities...." [34 C.F.R. Section 303.321(e)]. This screening process does not comply with these requirements, but can still result recommendations that can only be made after a full MDE. These provisions should be removed.

However, it is entirely acceptable (and in the case of evaluations secured by the family mandatory) for the MDE team, with the family's consent, to consider the results of prior evaluations. Nothing in these comments should be construed as disfavoring such an approach – so long as the entire MDE complies with federal and state requirements, and only the MDE team

makes recommendations that are committed exclusively to its authority and expertise.

4226.35 (Preservice training): The Department should add to this list training in community resources and family centered planning and service delivery.

PERSONNEL

4226.54 (Requirements and qualifications [of service coordinators]: This is one of the most important issues in the proposed regulations – the level of expertise that the service coordinator must have to do this job competently. From the first draft (and these credentials are at a lower level than in either of the 2 earlier drafts), we and others have expressed our concern that these qualifications are inadequate. For example, a service coordinator could have an associate's degree *in any subject area*, and three years' work or volunteer experience in management or supervision, and qualify. There is no requirement that the service coordinator bring to this task training or even experience in child development, the needs of children and families with disabilities and so forth. We attach to these comments the proposal that we submitted to the Department in 1998, which was based on input from professionals in the field. We believe that the qualifications should reflect the competencies required, a position that we believe the Department embraces. This 'competency based' approach was used with respect to service coordinators when the Department contracted with Dr. Phillipa Campbell in (approximately) 1997.

We also think that the regulations should include a caseload maximum for service coordinators, so that we can be certain that they can perform their complex responsibilities adequately. In the early years of this program, the state informally used 35 children with active IFSPs as a guideline. Some think even this is too high.

4226.55-.56 (Early interventionist, requirements and qualifications): This is also a hugely important issue. Through these regulations, the Department has created a new type of early intervention service and provider, described here in only the most general terms. It is unclear how this service differs from that provided by the service coordinator and the special educator. What does it mean to, "implement the child's IFSP directly or by supervising the implementation of services provided by other early intervention personnel?" If the person is delivering special instruction, he is a less qualified person usurping the role of the special educator. And, how can such a person "supervise" other qualified and licensed early intervention personnel? If the person is simply coordinating the services in the child's IFSP, he is usurping the role of the service coordinator.

These questions become more urgent when one reviews the relatively minimal requirements for such a staff person. Again, the person could have an associate degree *in any subject matter* and three years volunteer work with children (say at a camp for children with disabilities), and qualify as an early interventionist. Again, we submitted an alternate proposal to the Department in 1998, to which we never received a substantive response.

I believe that the creation of this position, and in particular the setting of qualifications for this position that are less than those of a special educator, are a violation of, among other things, the federal requirement that the state's personnel standards for early intervention be based on the, "highest requirements of the state applicable to a specific profession of discipline." 20 U.S.C. Section 1435(a)(9)(B). In August, 1999, I sent a letter to the Department in which I detailed my legal objections. I have received no substantive response to this letter either.

4226.57 (Effective date of personnel qualifications): This provision grandfathers in indefinitely service coordinators and early interventionists **with even fewer credentials than are required by these regulations.** While it is reasonable to give personnel some time to come into compliance, the regulations should require all such staff to meet applicable standards within a four year period. (In fact, I believe that such a requirement is mandated by federal law. See, *e.g.*, 34 C.F.R. Section 303.361(c) and (e), which require a state that does not have sufficient qualified personnel to include in its Application timelines for the retraining or hiring of personnel that meet appropriate professional requirements; and that in case of shortage permit a state to use "the most qualified individuals who are making satisfactory progress toward completing applicable course work....").

EVALUATION AND ASSESSMENT

4226.62(a)(2)(MDE): This provision requires an evaluation by someone other than the provider in all cases. It is, in general, a good idea for the evaluation to be done by personnel independent of the provider who will deliver the services – it reduces the likelihood that the child will be determined to need only those services that the provider has available. On the other hand, there needs to be some "exception" process for those situations where a particular type of evaluator is needed in a region of the state where no comparably skilled independent evaluator is available. Perhaps the regional office could play a role in this.

Moreover, the language is ambiguous and will lead to confusion in the field. It states that the person performing the MDE must be, "independent of service provision." Does that mean that they will not be providing services to the child who is the subject of the evaluation; that they cannot in the future provide services to that child; or that they are not providing early intervention services to any child? I understand that counties are currently implementing this requirement in a variety of ways because of this confusing language in Department directives.

Some additional issues regarding the MDE process are:

- The regulation should require that a written MDE report be shared with the family before the IFSP is developed. Otherwise, families are without the information they need to participate effectively in the IFSP meeting. (This is required for students covered by Part B of the IDEA);

- The regulation should require that parents be given advance written notice that they can ask that other persons participate in the MDE or the IFSP meeting, and

that they can bring whomever they wish to these meetings.

4226.62(d): This provision should make clear that the 45 day period runs from the date of referral, and that, for children determined eligible, the initial IFSP meeting must also be held within this time period. 34 C.F.R. Section 303.342(a).

IFSPs.

4226.72(b)(Procedures for IFSP development, review and evaluation): The federal regulation states that IFSPs shall be reviewed at 6 month intervals, or more often, "if the family requests such a review." 34 C.F.R. Section 303.342(b)(1). This phrase should be added to this provision.

4226.73 (Participants in IFSP meetings and periodic reviews): This is the list of personnel required by the federal regulations. However, this provision should also state that the service coordinator must have the authority to commit the County's resources, or someone with that authority must attend. The IFSP team (and not the County) has the responsibility, and therefore must have the authority, to make decisions as to what a child needs – and therefore what must be listed on the IFSP. We have received complaints that teams have reached tentative decisions, but that the ultimate decision has been referred to the County. Such a process violates the law, and would be avoided with the above addition.

4226.74 (Content of IFSP): The IFSP must include the "location" (this term defined, but it does not state that the location must be listed in the Plan).

4226.74(7)(i) (Dates, duration of services): This provision includes the phrase from the federal regulations, namely, that the services must start, "as soon as possible after the IFSP meetings." Timely implementation of IFSPs is key to the success of the whole system – and has been problematic in many counties (see, for example, the situation in Philadelphia which led to litigation; and in Montgomery County where the Regional Office had to order corrective action). The only way to make sure that families are clear on their rights, and that counties are clear on their duties, is to set a deadline – and we suggest 14 days, the timeline suggested by DPW in one of the earliest drafts of the regulations. I consider this one of the most important issues in these regulations; without this kind of clarity, many children will be denied needed services.

4226.74(9)(transition): First of all, this section should include the transition components in 34 C.F.R.303.344(h), which spell out the extent to which the IFSP must provide for training and discussions with parents; require steps to help the child adjust to the new setting; and clarify whether records can be transmitted. Given that the state regulations will replace the federal regulations as guidance to the field, it's important that these requirements be explicitly listed. In addition, the state has agreed, and has put in its Bulletin, that "pendency" applies between these systems, and that children cannot be dropped from the service in the IFSPs at 3 because their parents do not agree with the services offered by the MAWA. This requirement should be

regulatory.

We also recommend that this provision contain the language in the current (and proposed) Bulletin/BEC on transition, that the child's program and placement remain the same during the transition year, unless there are programmatic (rather than administrative or funding) reasons for the change.

PROCEDURAL SAFEGUARDS

4226.91 (General responsibility of legal entity for procedural safeguards): These regulations make no mention of the complaint management system required by 34 C.F.R. Sections 303.510-.512. In fact, contrary to the federal requirements, Section 4226.97 (prior notice) does not state that the written notice must describe, "[t]he State complaint procedures..., including a description of how to file a complaint and the timelines under those procedures." Parents simply do not know that this system exists and how to use it, despite the State's obligation under the federal regulations of, "widely disseminating to parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State's [complaint management] procedures...." 34 C.F.R. Section 303.510(a)(2). Since the State has chosen to include the federal language on all other requirements, it should also include this requirement, with appropriate modification to reflect the PA procedure.

4226.96 (Opportunity to examine records): This section should include the applicable federal procedures, and should also state (this is a PA option) that families can have access to copies of their records without cost.

4226.97 (Prior notice; native language). In addition to the point made above, the regulation deletes the phrase in the federal regulations that notice must be, "written in language understandable to the public." This is an important protection. 34 C.F.R. Section 303.403(c)(1).

4226.101(b)(1)(Parent rights in administrative proceedings): Parents often cannot afford to retain an attorney, and the regulation should make clear that the parents can utilize the services of whomever they wish to assist them at a hearing. We recommend the use of the language that applies to children covered by Part B of the IDEA: "Parents may be represented by any person, including legal counsel." 22 Pa. Code Section 14.64(h).

4226.102 (Impartial hearing officer): This section includes the federal language on impartiality, but not the language on qualifications and duties (which were, by the way, the subject of litigation in *Jill D. v. DPW*, when DPW was using hearing officers from the Fair Hearing System who were not knowledgeable about these children or these laws). 34 C.F.R. Section 303.421 states that hearing officers must, "have knowledge about the [early intervention law] and the needs of, and services available for, eligible children and their families." It also lists the hearing officers' "duties."

4226.103 (Convenience of proceedings; timelines): The section does not, in fact, contain the timeline for resolving hearing requests, which is 30 days. 34 C.F.R. Section 303.423(b).

4226.105(f) (Surrogate parents): This section confuses the federal criteria for when a foster parent is considered to be a parent, with the criteria for when a foster parent is eligible to serve as a surrogate parent. The result is that this regulation would significantly limit foster parents' ability to serve as surrogate parents for children in their care. See 34 C.F.R. 303.19(b) and discussion above under definition of "parent."

Limitations on foster parents serving as surrogate parents are extremely ill-advised, since foster parents are the ones with physical access to, and the daily responsibility of care for, these children – and are most often the best (and sometimes the only) adults able to perform this function. Very rarely do counties (or local educational agencies for children of school-age) maintain a pool of surrogate parents, and many delays (and sometimes gaps in program) occur because no one is legally competent to give consent or to authorize services. I recommend restoring the language from the 1997 draft, which stated: "A foster parent is eligible to serve as a surrogate if all requirements for surrogate ... are met." Section 4225.196(d). [See 34 C.F.R. Section 303.406 for applicable criteria for surrogate parents].

We also strongly urge the Department to restore Section 4225.194(b) of the 1997 draft (which authorized the County program to appoint a surrogate parent at the request of the parent under certain circumstances), and Section 4225.201 (which protects surrogate parents from liability if they perform their duties in good faith). The Education Law Center has surveyed all of the counties regarding the problems they encounter in providing services to children in foster care. It is clear that there are many problems. Making the surrogate process easier and more effective will be a big help.

IMPORTANT OMISSIONS

A key criticism of this draft is that it omits some progressive and essential requirements from earlier drafts. Just before the 2 year review of the 1998 draft began, as a follow-up to the last stakeholder meeting, I sent to DPW a list of the provisions whose elimination would most hurt kids and families. In addition to those already included above, I would add the following:

1997 Draft on Health Component of MDE (Section 4225.126), which gives clear direction to counties in an area that is unfamiliar, and will go far towards insuring that service coordinators meet their obligations to coordinate, "the provision of early intervention and other services (such as medical services...) that the child needs or is being provided." 34 C.F.R. Section 303.22(23)(ii).

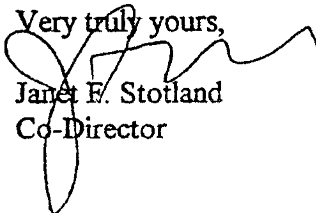
1997 Draft on Independent Evaluations (Section 4225.72). Although the old version wasn't perfect, it made clear that families could request one independent evaluation per year, at the expense of the County program. The settlement in the *Jill D.* lawsuit, and the current Bulletin

resulting from that lawsuit, in fact required that an evaluation at public expense be provided whenever a parent requests a hearing. This should be added to the 1997 draft language.

Many parents do not have the resources to secure independent information about what their child needs. Often, this information will confirm the County's offer, and will leave all parties with confidence that the IFSP is correct. But, in the context of a hearing, such evaluations are crucial if the family is to have a meaningful chance to present its case to the hearing officer, and this information should not be available only to families with resources.

Thanks for this opportunity for input.

Very truly yours,



Janet F. Stotland
Co-Director

Public Comment 2C

Original: 2122

Juvenile Law Center

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TESTIMONY REGARDING EARLY INTERVENTION SERVICES

Presented by Juvenile Law Center

July 25, 2000

Thank you for this opportunity to comment on the proposed rulemaking on early intervention services.

My name is Eleanor Bush, and I am a staff attorney at the Juvenile Law Center. Juvenile Law Center is a non-profit, public interest law firm which advances the rights and well-being of children in jeopardy. One of our areas of focus is the well-being of children living in foster care – children who have been abused or neglected and who have been removed from their homes by the county children and youth agency. Today, I will focus my remarks on the state's population of young children living in foster care. Specifically, I suggest that the Department revise the proposed regulations both to simplify and expand the provisions permitting foster parents to consent to and monitor the provision of early intervention services for young children in their care. I base these recommendations on Juvenile Law Center's experience representing individual children and the experiences of our professional colleagues among health care providers and providers of social services.

Of all the young children who need and can benefit from early intervention services, young children living in foster care are among the most vulnerable. Typically, children entering foster care have histories of prenatal exposure to drugs or alcohol as well as experiences of neglect, abuse, and fragmented medical care. Because of their life circumstances, these children experience higher rates of developmental delays than those found among the general population. Indeed, data from Philadelphia's "Starting Young" program, a multidisciplinary developmental follow-up program for infants and toddlers involved with Philadelphia's Department of Human Services, indicate that nearly half the children evaluated by a pediatrician met the criteria for enrollment in early intervention services.[1]

[1]Silver, J., et al. "Starting Young: Improving the Health and Developmental Outcomes of Infants and Toddlers in the Child Welfare System." Child Welfare, 78: 148-165, 1999.

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Unfortunately, too many of these children face obstacles to obtaining the services they need. According to health care providers, social service providers and foster parents, at least three problems prevent foster children from obtaining services promptly. First, confusion exists regarding who has authority to consent to evaluations for foster children. Second, delays occur in obtaining evaluations and services when children's birth parents cannot be located or persuaded to participate. Finally, appointment of surrogate parents is neither prompt nor consistent. Of course, when children experience delays in obtaining services, they lose some of the benefit of those services, and their own development may continue to lag, making it even harder to help them "catch up" when services do start.

Part of the answer to improving provision of early intervention services to young foster children lies in taking full advantage of opportunities for the children's foster parents to act in the place of the children's birth parents when the latter are unknown, unavailable, or have had their legal rights extinguished. When birth parents are not involved, foster parents are often best situated to fulfill a parent's responsibilities for early intervention decision-making. Foster parents have physical custody of the children and day to day responsibility for their care. They often know the children better than any other adult and often can advocate very effectively for them.

The Department's proposed regulations are flawed, because they limit opportunities for foster parents to take responsibility for early intervention decision-making when the child's birth parents are not available. Let me illustrate with an example.

A foster mother is providing care to an infant under six months old. She notices that the baby does not react to the sound of the vacuum cleaner, to the voices of other children, or to other household sounds. Thus, she suspects that the child has a hearing problem and needs an evaluation. Studies show that when hearing loss is detected and services initiated before a child is six months old, the child will make much greater progress than a child whose hearing loss is detected only a few months later.

The county children and youth agency with custody of the baby has never been able to locate the baby's birth parents, yet that's whose consent is needed in the first instance to authorize an evaluation and initiation of services. This baby needs a surrogate parent appointed and needs it right away. Under the Department's proposed regulations the foster mother – the person who noticed the baby's problem and immediately sought help – could not be appointed as a surrogate parent. Rather, the county would have to recruit some other adult – very likely a stranger to the child – to take on parental responsibility for early intervention for this child. Meanwhile, the child's health, well-being, and current and future development would be jeopardized by any delay.

To remedy the problem posed by my example and to maximize the opportunities for foster parents to take responsibility for early intervention decision-making, the Department should revise the proposed definition of "parent" and the criteria for being appointed as a "surrogate parent."

Section 4226.5 – Definition of "Parent"

Federal law provides that states may allow a foster parent to be considered the child's "parent" when the birth parents' rights to the child have been terminated, and the foster parent has an ongoing parental relationship with the child, is willing to make early intervention decisions, and has no interest that would conflict with the child's interests. Although nothing in state law would prevent the Department from taking advantage of this flexibility, the Department has not incorporated the federal provision into the proposed regulation. The Department should do so.

Section 4226.105 – Surrogate Parents

Many young children living in foster care have birth parents who are unavailable to participate in early intervention decision-making, but whose parental rights have not been terminated. These young children need to have surrogate parents appointed for them if they are to receive early intervention services. The proposed regulation would prevent these children's foster parents from serving as surrogates for them. The proposed limits on foster parents' eligibility to serve as surrogate parents are not required by federal law, serve no purpose, and should be deleted. Instead, the Department should simply provide that a foster parent is eligible to be appointed as a surrogate parent as long as the foster parent meets the other existing criteria for serving as a surrogate parent.

The changes I have proposed are relatively minor, but I believe they would do much to speed delivery of early intervention services to young foster children who need them. I urge the Department to accept these suggestions and thank you again for the opportunity to comment today.

Public Comment 24

Original: 2122

TO: Mel Knowlton
PA Department of Public Welfare
FROM: Parent Education Network
DATE: 7/24/00
RE: Early Intervention Draft Regulations

Thank you for the opportunity to comment on the proposed regulations for Early Intervention Services (55 PA. Code CHS. 4225 and 4226). Parent Education Network (PEN) is the IDEA-funded Parent Training and Information Center serving all of Pennsylvania. Over the last five years, PEN contacts have averaged 1500 parents and professionals involved in the EI system in Pennsylvania each year. PEN has been involved in the writing of draft regulations for EI since 1993. PEN is keenly aware of the work that has gone into this document and of the necessity to have clear regulations, which are uniformly interpreted by state and local entities.

While we agree with using the language of the IDEA regulations as a starting place in the development of regulations, there is language in the present draft which needs to be added or clarified to reflect the unique Early Intervention system in Pennsylvania. There are also several areas with which we disagree. We will address our comments to these issues.

4226.26 PURPOSE OF INITIAL SCREENING

The screening should be a tool to assist families to determine if a multidisciplinary evaluation is necessary and if so, what personnel should be on the MDE team and the appropriate evaluation instruments that should be used.

As currently written, a child, based on a single instrument administered by a single individual (a screening), could be prohibited from obtaining a comprehensive evaluation. This is contrary to IDEA in our opinion.

We suggest that the regulations mandate that if the child's development appears to be within normal limits according to the screening, that parents be given notice in writing of their ability to continue with the MDE process.

4226.28 RECOMMENDATIONS TO PARENTS

We suggest the following replacement for current wording:

(1) The child fails the screening and, with written parent consent, is referred for a Multidisciplinary Evaluation to determine eligibility for early intervention services;

(2) The child passes the screening and, with written parent consent, is not referred for a Multidisciplinary Evaluation;

(3) The child passes the screening and, with written parent consent, is referred for a Multidisciplinary Evaluation;

(4) The child passes the screening and, with written parent consent, is referred for tracking.

We also suggest that, at the time of screening, the parent should be given a readable description of EI procedures the follow the screening, with timelines, etc. so that they understand how the system works. PEN's Early Intervention in Pennsylvania: A Guide for Parents would be an appropriate companion to the guide distributed by DPW.

4226.32 CONTACTING FAMILIES

We suggest that this section add the requirement for written documentation by the legal entity of contact.

4226.36 PRESERVICE TRAINING

Section (5) needs clarification, as "family preference" is not always a determining factor in decisions regarding early intervention service delivery.

4226.38 CRIMINAL HISTORY RECORDS CHECK

This section omits the requirement for a Child Abuse Clearance.

4226.54 REQUIREMENTS AND QUALIFICATIONS

Based on the importance of the service coordinator and the scope of that person's duties, the qualifications stated in this draft are not sufficient in terms of academic training, knowledge base or experience. At a MINIMUM, we recommend A Bachelor's Degree in a field related to EI (such a Early Childhood, Speech/Language Pathology, Special Education, Physical or Occupational Therapy) AND at two years experience WORKING with children with special needs in early intervention or preschool programs.

Volunteer work is not sufficient experience as it is not necessarily supervised. The draft also does not take into account the age of the person when they volunteered (thus the door is left open to count babysitting at age 16 as "experience").

Additionally, the service coordinator who works with children who are defined as "low incidence", should come to the position with WORK experience related to these particular disabilities.

4226.55 EARLY INTERVENTIONIST

It is unclear to us why this position is described in this draft, when there is no correlate in IDEA and when the description of the early interventionist's job appears to duplicate that of the service coordinator, program supervisor, special educator, therapists, etc. PEN questions why such a position is needed and how the early interventionist's role differs from other EI personnel. We recommend deletion of this section and of the position.

4226.62 MDE

PEN disagrees with the requirement for initial evaluations to be completed by personnel independent of service provision. There has been no evidence cited by DPW or found by the 1996 Legislative Budget and Finance Committee study of EI that proved that services to children were compromised by evaluations by providers in the past. PEN has been made aware by parents that in many cases the quality and appropriateness of initial evaluations is being sacrificed due to the current DPW policy requiring independent evaluators. In discussion with county personnel, PEN has been told that most often it is the same professionals who evaluate every child, with no regard to the child's particular disability or area of delay.

(a) (2) "Personnel independent of service provision" is not clear. The term "service provision" needs to be defined, since evaluation is an early intervention service. In addition, a definition of "independent" is necessary distinguish between services to a particular child, any child in the same agency, any child in another agency. This important distinction was recommended in the last two drafts of the EI regulations, but is not found in the current draft. With nothing in writing currently, this has proven to be a very confusing issue in the EI field.

(b) (1) (C) notes the ability of the MDE team to make recommendations regarding services. PEN supports this practice.

(3) (C) (2) The word "team" should follow "annual MDE" in the first line. Also in this section, there should be clarification about how the parent will know that they can invite "anyone". We would suggest a notice given to the parent in writing at the screening.

(3) (C) The addition of a requirement for a written report of the results of the MDE given to parents within 60 calendar days of referral is necessary. Although it would be preferable for parents to have the written report prior to the IFSP meeting, there is concern that this activity may cause a delay in the writing of the IFSP. Parents should also be told in writing that if there is disagreement with the MDE report, a joint meeting with the MDE and IFSP teams will be convened within 10 calendar days of parent disagreement and if necessary, the IFSP will be revised.

4226.73 PARTICIPANTS IN IFSP MEETINGS & PERIODIC REVIEWS

PEN recommends that this section should begin with the statement that the IFSP team is to be "multidisciplinary" with " the involvement of two or more disciplines or professions" and parents.

(a)(6) PEN recommends that the phrase "as appropriate" be deleted, as we believe the personnel providing services are a necessary part of any IFSP team, just as they are in IDEA Part B. If DPW disagrees with this deletion, we recommend that at a minimum, the following be added: "Persons who will be providing services to the child or family, as appropriate, <u>determined by the family. Families will be informed in writing of this choice."</u>

In addition, the members of the IFSP team should include a member who has the county's authority to commit the county's resources.

4226.74 CONTENT OF THE IFSP

Because of conflicting verbal directives to counties about services in natural environments and because of the OSEP response to Mr. Frymoyer of PA's Legislative Budget and Finance Committee, PEN strongly recommends that these regulations emphasize the decision making power of the IFSP team. We recommend that the regulations contain the following statements:"The appropriate environment(s) where services will be delivered is the decision of the IFSP team"; "The appropriate justification of the extent, if any, that services will not be given in natural environments also rests with the IFSP team".

PEN recommends in section (7)(i) that a timeline for implementation of the IFSP be established. We suggest that a reasonable timeline is 14 calendar days after the IFSP has been approved by the team.

In addition, the IDEA requirement for location must be listed on the IFSP.

4226.93 CONFLICT RESOLUTION

We find this section to be very confusing. It does not clearly delineate the difference between a county level request for conflict resolution and a formal mediation request. To better clarify, we suggest that a first sentence in this section describe the three basic ways that parents can resolve conflicts in the EI system: (1) Internal county conflict resolution system (describe), (2) PA Mediation Service (describe) and (3) Impartial Hearing (describe). It should be noted that these are separate systems and can be requested simultaneously.

This section also does not contain the federal requirement for directions to parents about how to file a complaint and the timelines for that formal complaint process.

We believe that (4) is not in keeping with the IDEA. The draft language makes it appear that due process rights and procedures are ONLY available if a parent uses the conflict resolution system outlined in these regulations.

These changes would necessitate elimination of 4226.94, as mediation would be included under 4226.93.

4226.95 MEDIATION

Paragraph (a) infers that the mediation process could be available only when the parents request an impartial hearing with the use of the phrase "at a minimum". It does not make clear who decides if mediation can be used without a request for a hearing.

PEN recommends a statewide mediation service available to all parents, at any time, when there is a conflict. Again, it is our recommendation that this section be incorporated into 4226.94 as a subsection of "Conflict Resolution".

4226.100 ADMINISTRATIVE RESOLUTION OF INDIVIDUAL CHILD COMPLAINTS BY AN IMPARTIAL DECISIONMAKER
4226.101 PARENT RIGHTS IN ADMINISTRATIVE PROCEEDINGS
4226.102 IMPARTIAL HEARING OFFICER
4226.103 CONVENIENCE OF PROCEEDINGS;TIMELINES
4226.104 STATUS OF A CHILD DURING PROCEEDINGS

PEN recommends that these sections become incorporated into 4226.94 as a subsection of "Conflict Resolution".

CC: Robert Nyce, IRRC

Original: 2122

RECEIVED

2000 JUL 27 AM 9:28

REVIEW COMMISSION

TO: Mel Knowlton
PA Department of Public Welfare
FROM: Parent Education Network
DATE: 7/24/00
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PARENT EDUCATION NETWORK
2107 INDUSTRIAL HWY., YORK, PENNSYLVANIA 17402

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(a) (2) "Personnel independent of service provision" is not clear. The term "service provision" needs to be defined, since evaluation is an early intervention service. In addition, a definition of "independent" is necessary distinguish between services to a particular child, any child in the same agency, any child in another agency. This important distinction was recommended in the last two drafts of the EI regulations, but is not found in the current draft. With nothing in writing currently, this has proven to be a very confusing issue in the EI field.

(b) (1) (C) notes the ability of the MDE team to make recommendations regarding services. PEN supports this practice.

(3) (C) (2) The word "team" should follow "annual MDE" in the first line. Also in this section, there should be clarification about how the parent will know that they can invite "anyone". We would suggest a notice given to the parent in writing at the screening.

(3) (C) The addition of a requirement for a written report of the results of the MDE given to parents within 60 calendar days of referral is necessary. Although it would be preferable for parents to have the written report prior to the IFSP meeting, there is concern that this activity may cause a delay in the writing of the IFSP. Parents should also be told in writing that if there is disagreement with the MDE report, a joint meeting with the MDE and IFSP teams will be convened within 10 calendar days of parent disagreement and if necessary, the IFSP will be revised.

4226.73 PARTICIPANTS IN IFSP MEETINGS & PERIODIC REVIEWS

PEN recommends that this section should begin with the statement that the IFSP team is to be "multidisciplinary" with " the involvement of two or more disciplines or professions" and parents.

(a)(6) PEN recommends that the phrase "as appropriate" be deleted, as we believe the personnel providing services are a necessary part of any IFSP team, just as they are in IDEA Part B. If DPW disagrees with this deletion, we recommend that at a minimum, the following be added: "Persons who will be providing services to the child or family, as appropriate, determined by the family. Families will be informed in writing of this choice."

In addition, the members of the IFSP team should include a member who has the county's authority to commit the county's resources.

4226.74 CONTENT OF THE IFSP

Because of conflicting verbal directives to counties about services in natural environments and because of the OSEP response to Mr. Frymoyer of PA's Legislative Budget and Finance Committee, PEN strongly recommends that these regulations emphasize the decision making power of the IFSP team. We recommend that the regulations contain the following statements:"The appropriate environment(s) where services will be delivered is the decision of the IFSP team"; "The appropriate justification of the extent, if any, that services will not be given in natural environments also rests with the IFSP team".

PEN recommends in section (7)(i) that a timeline for implementation of the IFSP be established. We suggest that a reasonable timeline is 14 calendar days after the IFSP has been approved by the team.

In addition, the IDEA requirement for location must be listed on the IFSP.

4226.93 CONFLICT RESOLUTION

We find this section to be very confusing. It does not clearly delineate the difference between a county level request for conflict resolution and a formal mediation request. To better clarify, we suggest that a first sentence in this section describe the three basic ways that parents can resolve conflicts in the EI system: (1) Internal county conflict resolution system (describe), (2) PA Mediation Service (describe) and (3) Impartial Hearing (describe). It should be noted that these are separate systems and can be requested simultaneously.

This section also does not contain the federal requirement for directions to parents about how to file a complaint and the timelines for that formal complaint process.

We believe that (4) is not in keeping with the IDEA. The draft language makes it appear that due process rights and procedures are ONLY available if a parent uses the conflict resolution system outlined in these regulations.

These changes would necessitate elimination of 4226.94, as mediation would be included under 4226.93.

4226.95 MEDIATION

Paragraph (a) infers that the mediation process could be available only when the parents request an impartial hearing with the use of the phrase "at a minimum". It does not make clear who decides if mediation can be used without a request for a hearing.

PEN recommends a statewide mediation service available to all parents, at any time, when there is a conflict. Again, it is our recommendation that this section be incorporated into 4226.94 as a subsection of "Conflict Resolution".

4226.100 ADMINISTRATIVE RESOLUTION OF INDIVIDUAL CHILD COMPLAINTS BY AN IMPARTIAL DECISIONMAKER
4226.101 PARENT RIGHTS IN ADMINISTRATIVE PROCEEDINGS
4226.102 IMPARTIAL HEARING OFFICER
4226.103 CONVENIENCE OF PROCEEDINGS;TIMELINES
4226.104 STATUS OF A CHILD DURING PROCEEDINGS

PEN recommends that these sections become incorporated into 4226.94 as a subsection of "Conflict Resolution".

CC: Robert Nyce, IRRC

Public Comment 15

Original: 2122

TESTIMONY

ON

CHILD CARE: The Natural Environment & Comments on Proposed Regulation Amendments for Early Intervention Services

July 24, 2000

PRESENTED BY

TERRY CASEY
EXECUTIVE DIRECTOR
Pennsylvania Child Care Association
411 Walnut Street
Harrisburg, PA 17101

Testimony

Child Care: The Natural Environment
Comments for Proposed Amendments to Regulations on Early Intervention
July 24, 2000

Presented by
Terry Casey
PACCA
411 Walnut Street
Harrisburg, PA 17101

Good morning, my name is Terry Casey and I am the Executive Director of the Pennsylvania Child Care Association (PACCA). PACCA is a statewide non-profit charitable association representing organizations and individuals with a professional and business interest in the child care field. Our membership is very diverse and includes the Child Care Resource Developers, Child Care Information Service agencies, Head Start facilities as well as the vast majority of our membership – licensed child care providers. These providers care for the Commonwealth's children in licensed family day care, group and center care settings. Our members provide care to over 200,000 children in the Commonwealth from infants through school age.

The association is the leading advocate for quality, affordable child care for all who need and desire it in Pennsylvania. PACCA focuses its energies on the development of sound public policy aimed at improving the provision of and access to child care services in the Commonwealth. I thank you for giving me the opportunity to testify today on this vital issue – the effects of the proposed changes to early intervention service regulations.

Child care is certainly one of those areas that meet the definition of natural environment for children between the ages of birth to three years of age. Child care is one of the primary settings that is natural for the child's peers who have no disabilities. Child care providers care for children in center, group and family facilities. These providers have criminal history records checks, many have associate degrees or the equivalent in training and experience in early childhood

education, and are subject to the licensing regulations that require six clock hours of training.

I am sure that many individuals will speak to these proposed regulation amendments from the perspective of legal implications, format and interpretation for early intervention specialists, MR/MH providers and county administrators. I am here to represent the child care community and their concerns. I am also here to ask clarification questions: **about costs**, **about training**, about the **role of child care providers in the IFSP** and delivery of services.

PACCA advocates for quality care but we note that there is a cost to that care and that cost is a fee for service charged to parents. A fee that cannot be increased because of additional meetings or special care needs for a child with special needs. According to the law, if child care providers charged parents of children with disabilities or special needs more than other parents of children without those disabilities or special needs, the providers would be violating the law – the American with Disabilities Act.

Child care providers should be part of the IFSP and the delivery of service in the natural environment. But how can child care providers recover the dollars it will take to replace the staff person who must go to a meeting or who must spend dedicated time with a child who needs some therapy which the parent or provider could deliver? Will we be able to bill the county?

Regarding the issue of training, we note the proposed regulations stipulate 24 hours of training relevant to early intervention services for the service coordinator, early interventionist and other personnel. Will this requirement apply to child care providers? Currently, child care providers are required to take 6 clock of hours of training per year, with no requirement as to what topics or areas the training needs to be in.

PACCA is the organization licensed in the Commonwealth to administer the T.E.A.C.H. Early Childhood PENNSYLVANIA scholarship program for child care practitioners who want to increase their education toward an Associate of Arts degree in early care education and child development or a Child Development Associate credential. T.E.A.C.H. stands for Teacher Education And Compensation Helps and is a unique scholarship program that addresses increasing provider education, increasing compensation and decreasing turnover. By providing scholarships to over 600 individuals, PACCA monitors compensation, turnover and early care and education curriculum on a regular basis. Gathering data on a regular basis allows us to speak with authority that there is a staffing crisis in child care. This situation is a result of several factors including low wages and few benefits. The typical staff person working with children earns about $6.25 per hour or under $13,000 a year for a 40 hour week. This translates to a huge turnover

problem which certainly impacts children in care. Directors of child care programs report being in a constant search and training mode which impacts the cost of care, consistency of care, and the quality of care given to all children. Let me be clear that child care is the natural environment for many children whose parents must work outside the home. We want to give more than custodial care and we want to work with all children including those with disabilities and special needs. However, we are an industry with high turnover and in desperate need of specialized training and we must cover the cost of care or be forced to close.

PACCA welcomes the opportunity to work with the Department of Public Welfare and others in the final stages of the Amendments to the Early Intervention Regulations.

Submitted by
Terry Casey, Executive Director
Pennsylvania Child Care Association
July 24, 2000

Public Comment 16

Original: 2122

Early Intervention Providers Association

Department of Public Welfare, Central Region
Proposed Rulemaking for Early Intervention Services
Public Hearing
July 24, 2000

EIPA ORAL TESTIMONY
PROPOSED STATE REGULATIONS

Good afternoon! My name is Michele Myers-Cepicka. I am the President of the Early Intervention Providers Association of Pennsylvania (EIPA). Our Association represents over 75 agencies that provide Early Intervention services to infants and toddlers throughout the state of Pennsylvania. Our Association appreciates the opportunity to offer input regarding the state's proposed Early Intervention regulations. Because testimony is limited to five minutes, I will only be able to highlight the major issues that the Association sees with the regulations.

I would also like to add a disclaimer for our members. As you may realize 75 members cannot always agree on each comment made by EIPA. In fact, the officers of EIPA have encouraged each of the agencies to submit individual comments, particularly in areas of disagreement.

FINANCIAL MANAGEMENT

4226.14 Documentation of other funding sources

(a) The Association feels that the statement in this section is unclear as to *who* shall exhaust all of their funding sources. Also, it is unclear as to what "all other private and public funding sources available to the child and family" refers to.

GENERAL REQUIREMENTS

4226.22 Eligibility for Early Intervention services

(3b) The Association is concerned that the State's definition referring to Informed Clinical Opinion is much more restrictive than that of the Federal Regulations. 3b states "Informed clinical opinion ***may*** be used when there are no standardized measures...". The Federal Regulations state "...Informed Clinical Opinion is *especially important* if there are no standardized measures...". The Association recommends that the State Regulations mirror that of the Federal Regulations.

4226.25 Initial Screening

(a) The Association is confused as to whether or not the initial screening can be used to rule out an MDE. It would be our recommendation that the initial screening not be allowed to rule out the need for an MDE whenever a parent chooses to proceed with an MDE. We are also confused as to whether or not the initial screening always requires the use of a standardized testing tool for screening children's developmental progress. We would recommend a clearer definition of what *initial screening* means.

(b) It is the Association's feeling that conducting an initial screening and an MDE simultaneously would be highly unlikely and inappropriate. It seems to us that the initial screening would have to be performed prior to the evaluation in order to determine which disciplines are needed for the MDE.

4226.30 At-risk children
This section currently reads "A child identified through the initial multidisciplinary evaluation..." It is the Association's understanding that an at-risk child may also be deemed eligible for the tracking system through the initial screening process (4226.28). It is our recommendation that the line reads "A child identified through the *initial screening process or* through the initial multidisciplinary evaluation is eligible..."

4226.37 Annual Training
(a) The Association agrees that annual training is absolutely imperative. The concern lies in the *amount* of required annual training. The requirement of 24 hours annually will limit the availability of staff as well as impose a financial hardship on the agencies. The Association would like to know if there will be any type of reimbursement for these mandated training hours.

PERSONNEL
4226.55 Early Interventionist
We are not sure whom this position is meant to describe. The definition of who this individual is needs to be clearly defined somewhere in the regulations. Is this person a special educator, a service coordinator, a developmental therapist or other professional therapist, a teacher or someone entirely new?

4226.56 Requirements and Qualifications
(a) The level of expertise of the early interventionist is of great importance. The Association feels that the current requirements are too broad. The requirements need to relate directly back to a related field including Early Child Development, Education, Human Development and Family Studies or Special Education.
(b) The Association is greatly concerned with the annual requirement of 6 credit hours. It is unclear how these 6 credit hours relate to the 24 annual hours of training (4226.37). The Association questions whether or not those early interventionists with Bachelors or Masters degrees will also be required to complete 6 annual credit hours? Requiring 6 credit hours annually is excessive and will create a financial hardship for individuals and programs. Another point to consider is the fact that a variety of relevant coursework either does not exist or is not available for most working in the Early Intervention field.

EVALUATION AND ASSESSMENT
4226.62 MDE
(2) The Association would like further clarification as to what is meant by "...personnel independent of service provision." We would also recommend an exception process for areas where resources are limited. Such limitations could include low incidence disabilities, lack of therapists, etc.

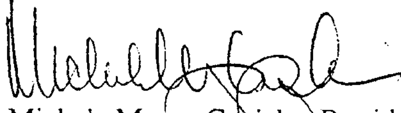
Although we are aware of members who support independent evaluation there are also members who feel that this requirement unnecisarily complicates the system, makes it less family-friendly, is not cost-effective, and jeopardizes the existing quality of initial evaluations.

GENERAL COMMENTS

One final point that the Early Intervention Providers Association would like to make is that we support the recommendation made by the SICC at its June meeting to extend the comment period for the proposed regulations. We feel that an extended comment period would allow more families as well as LICCs to provide the state with input about the proposed regulations.

We appreciate having been given the opportunity to provide input on the proposed Early Intervention regulations. The Association recognizes all of the time, hard work and effort that the Department has put into Early Intervention Regulations. Together we can work towards successfully meeting the needs of infants and toddlers with special needs and their families. Thank you!

Respectfully Submitted,



Michele Myers-Cepicka, President
Early Intervention Providers Association
1971 Baker Road
Manheim, PA 17545

Children's Seashore House *of* The Children's Hospital *of* Philadelphia

3405 Civic Center Boulevard
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Nutritional Counseling
Occupational Therapy
Physical Therapy
Psychological Services
Social Work
Speech/Language Therapy

Original: 2122

2000 JUL 31 AM 9:27
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REVIEW COMMISSION

July 21, 2000

Independent Regulatory Review Commission
333 Market Street, 14th floor
Harrisburg, PA 17101

To Members of the Commission:

I have enclosed my comments regarding the proposed changes in Pennsylvania's regulations regarding early intervention services for infants and toddlers. Thank you for the opportunity to address the Commission and express my opinions.

Sincerely,

Judith A. Silver, Ph.D.

Judith A. Silver, Ph.D.
Director, Starting Young Program
Department of Pediatric Psychology
The Children's Hospital of Philadelphia;
Clinical Assistant Professor of Pediatrics,
Associate Director, Leadership Education
In Neurodevelopmental Disabilities Program,
Division of Child Development and Rehabilitation
University of Pennsylvania School of Medicine

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Date:	July 21, 2000
To:	The Pennsylvania Department of Public Welfare
From:	Judith A. Silver, Ph.D. Clinical Assistant Professor of Pediatrics, Associate Director Leadership Education in Neurodevelopmental Disabilities Program Division of Child Development and Rehabilitation University of Pennsylvania School of Medicine; Director, Starting Young Program Department of Pediatric Psychology The Children's Hospital of Philadelphia
Re:	Proposed Changes in the State Infants and Toddlers Regulations

I would like to comment on the recently proposed modifications to the Pennsylvania regulations regarding early intervention services for infants and toddlers. My remarks are based on over 15 years of clinical experience in the developmental evaluation and follow-up of infants and toddlers who have been discharged from neonatal intensive care units. In addition, for the past 8 years, I have directed the Starting Young Program, a developmental follow-up program infants and toddlers in foster care, and served as its psychologist. I am also writing from the perspective of the training director of federally-funded fellowship program for professionals in pediatric and allied health fields, which promotes leadership training in the interdisciplinary care of children with developmental disabilities and related disorders.

Foster Parents as Surrogate Parents

Specifically, I wish to express concern that the proposed changes limit the ability of foster parents to be appointed as surrogate parents in the service of overseeing their foster children's IFSPs and early intervention programming. There is a fairly extensive body of research in the pediatric professional literature that consistently reports that children in foster care have elevated rates of chronic medical problems, developmental delays and learning problems[1]. Among children under 3 years of age, several independent studies report that 50% or more qualify for early intervention services[2]. These findings have been replicated by my own data, which includes multidisciplinary developmental evaluations of over 300 children under 31 months of age who are involved with the Philadelphia Department of Human Services[3]. The fact that half of the infants and toddlers in foster care have significant developmental delays is an extraordinary prevalence rate, and is approximately 4 times the expected rate among children in the general population[4].

There is an imperative that early intervention services should be family-centered. Consequently, it is preferable for a foster parent to serve as the surrogate parent regarding foster children's early intervention programming than for the foster care worker or legal advocate to serve in this role. It is the foster parent who likely will implement many interventions recommended by the child's early intervention therapists or educators. It is

the foster parent who observes the child daily and around the clock, who can advise the IFSP team regarding the child's needs, progress and preferences. In many cases it is the foster parent 's home in which the early intervention services are provided.

In addition, coordinating services for children in foster care is a complex and unwieldy process.[5] When it comes to implementing early intervention services, precious time can be lost in trying to recruit a surrogate parent outside of the foster family household. Foster care case workers and the child's legal advocate are unlikely to have sufficient time to attend IFSP meetings routinely, considering their heavy and demanding case loads. I am not alone in making the recommendation that foster parents should be considered to serve as surrogate parents. The Pennsylvania Children's Health Coalition 's Subcommittee for Children in Substitute Care recently published health policy recommendations,[6] which also support this recommendation. This subcommittee is composed of pediatricians and other health care professionals, child welfare professionals from the public and private sector, public health administrators and legal advocates who convened specifically to improve foster children's access to health care and early intervention services. To date the report's recommendations, including the appointment of foster parents as surrogate parents for the purposes of early intervention services, has been endorsed by a significant number of private child welfare agencies, legal advocacy agencies, and professionals who work with children in foster care.

After 8 years of working with over 400 infants and toddlers who were involved with the child welfare system, I can attest to the positive impact of early intervention services for those children who qualified. These interventions directly help the children and often provide important supports to the foster families caring for them. Consequently, early intervention services can be a positive influence in maintaining a child with special needs in a stable placement. In the absence of intervention the demands of the child's care or behavior can result in a failed placement which, in turn, will subject the baby to a change in foster homes and disruption in developmental progress. For all of these reasons I strongly recommend that the Pennsylvania Department of Public Welfare restore language from the 1997 draft which clearly indicates foster parents' eligibility to serve as surrogate parents [Section 4225.196(d)]. I also recommend the restoration of section 4225.201, which protects surrogate parents from liability if they perform their duties in good faith.

Personnel

I make the following remarks based on my experiences in the academic and clinical training of health care and allied health professionals over the course of 20 years. In the past year this experience has intensified as I assumed the position of Director of Training for a post-graduate fellowship program at the Children's Hospital of Philadelphia, the Leadership Education in Neurodevelopmental and Related Disabilities (LEND) Program, which is funded by the federal Maternal Child Health Bureau. This program provides a comprehensive, demanding curriculum for professionals in many of the fields that are represented in the provision of MDEs and early intervention services: physicians, nurses, occupational therapists, physical therapists, speech/language pathologists, psychologists,

and social workers. Its mandate is to instill leadership in the interdisciplinary care of children with developmental disabilities and delays, with the overarching goal of decreasing the prevalence and morbidity of these conditions among children.

The proposed changes in Pennsylvania's Infant and Toddler regulations present a misguided effort to water down the qualifications of personnel who will be coordinating and treating infants and toddlers with developmental delays and disabilities. Specifically, in 4226.54-.56 it diminishes the eligibility requirements and qualifications for Service Coordinators and creates a position of Early Interventionist. In both of these positions the qualifications can be as little as an associate degree in *any* subject matter, in conjunction with volunteer experiences. It is troubling that eligibility for each of these positions does not require ANY academic preparation or credential in early child development, developmental disabilities or in a field related to the interventions provided to infants and toddlers with developmental delays and disabilities. Including the broad, vague category of "volunteer experience" with children provides no guarantee that the individual received any meaningful supervision, nor that supervision was from a qualified professional.

These proposed changes fail to ensure fundamental professional preparation for personnel entrusted with the coordination of services and care for children with complex needs and their families. Families relying on early intervention services expect that knowledgeable professionals will be serving and advising them in their efforts to improve their children's functioning and developmental progress. By requiring such minimal qualifications of members of the early intervention team, the state misleads families and fails to meet the federal requirement that the state's personnel standards for early intervention should be based on the "highest requirements of the state applicable to a specific profession or discipline." (20 U.S.C. Section 1435 (a) (9) (B). On these same grounds I also find 4226.57 objectionable and unproductive, in that it grandfathers in indefinitely service coordinators and early interventionists with even fewer credentials than those required in 4226.54-.55!

By diminishing the qualifications and credentials required for positions involved with early intervention services, the quality of services will be diminished, families' trust in the state and the early intervention program will be breached, and most significantly, the children's outcomes will be attenuated. The adage "Penny-wise and pound-foolish" comes to mind. I strongly urge the state to: revise the regulations for infants and toddlers and change the service coordinators' qualifications to higher standards; to clarify or dispose of the proposed early interventionist position; and to require a specific, relatively brief time period for individuals who are "grandfathered in" to achieve appropriate credentials.

References:

[1] Chernoff, R., et al., (1994). Assessing the health status of children entering foster care. *Pediatrics, 93*, 594-601. Halfon, et al., (1995). Health status of children in foster care. *Archives of Pediatric and Adolescent Medicine, 149*, 386-392.Hochstadt, et al. (1987).

The medical and psychosocial needs of children entering foster care. *Child Abuse & Neglect, 11*, 53-62. Simms (1989).The foster care clinic: A community program to identify treatment needs of children in foster care. *Developmental and Behavioral Pediatrics, 10*, 121-128. Swire & Kavaler (1977). The health status of foster children. *Child Welfare, 56*, 635-653.Takayama, et al. (1998). Relationship between reason for placement and medical findings among children in foster care. *Pediatrics, 101*, 201-207.

[2]Halfon, *op. cit.*, Hochstadt, *op. cit.*, Klee, et al.(1997). Foster care's youngest: A preliminary report. *American Journal of Orthopsychiatry, 67*, 290-299., Simms, *op. cit.*

[3]Silver, et al., (1999). Starting young: Improving the health and developmental outcomes of infants and toddlers in the child welfare system. *Child Welfare, 78*, 148-165.

[4]Baker (1989). *Education indicators*. (National Center for Education Statistics. U.S.Department of Education.) Washington, DC: U.S. Government Printing Office.

[5]Pennsylvania Children's Health Coalition Subcommittee for Children in Substitute Care (1999). *Health policy recommendations for children in substitute care in Philadelphia.* Author.

Cc: Independent Regulatory Review Committee

SPIN, Inc.

Original: 2122

Special People In Northeast, Inc.

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REVIEW COMMISSION

July 21, 2000

Mr. Mel Knowlton
Department of Public Welfare
P.O. Box 2675
Harrisburg, PA 17105-2675

Dear Mr. Knowlton:

Attached please find comments and recommendations related to the proposed Early Intervention Services regulations published in the Pennsylvania Bulletin on June 3, 2000. We've been working toward this since 1994, and I was concerned that I would retire before seeing it to completion. Thank you for the open and professional way you have worked with stakeholders over the years. I appreciate the opportunity to participate in this process.

Sincerely,

Trina Losinno
Executive Director

xc: Robert Nyce, IRRC ✓
Representative Dennis O'Brien
Senator Harold Mowery
Elizabeth Yarnell

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Children Services

Early Childhood Center
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and

Frankford Offices
4700 Leiper Street
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Vocational Services Employment Services
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Phone: (215) 613-1051
Fax: (215) 613-1067

Norcom Community Center Support Services
10980 Norcom Road
Philadelphia, PA 19154
Phone: (215) 613-1070
Fax: (215) 613-1078

Early Intervention Services Regulations
55 PA.CODE CHS.4225 and 4226

Comments and Recommendations on Proposed Rulemaking

Preface Section

#4226.35-.37 (relating to training; preservice training; and annual training)

Concern: *The Department will determine how many hours of training early Intervention staff will receive on an annual basis.*

Issue: In order to plan and budget for training, providers need to have a firm number of hours of training that staff are required to take each year.

Recommendation: Staff will be required to take 24 hours of training annually which includes topics in early childhood development areas, health concerns of children and renewal of required certifications such as first aid, fire safety, CPR, etc.

Summary of Fiscal Note

Concern: *It has been determined that the requirements of these regulations are cost neutral.*

Issue: When the study was done by the department to determine appropriate rates, the impact of PART C of the IDEA, the Infants, Toddlers and Families Waiver, documentation and monitoring protocols and, as introduced in the proposed regulations, the requirement for staff training were not factors. As these elements have developed, providers have had only COLA increases. No adjustments have been made to the rate for additional requirements which are not billable units of service.

Recommendation: Authorize a rate adjustment.

#4226.23 Waiver Eligibility

Concern: (a)(1)(ii) *Performance that is slightly higher than two standard deviations. . .*

Issue: The interpretation of slightly will differ across the state and would arbitrarily cause some children to be eligible and others to be ineligible.

Recommendation: Clearly define the criteria.

#4226.24 Comprehensive child find system.

Concern: (f)(2)(iii) *Develop a plan for further assessment and tracking.*

Issue: IDEA, Part C requires the IFSP to be developed within the 45-day timeframe. A plan for assessment and tracking is not an IFSP.

Recommendation: Delete (f)(2)(iii) as an option.

#4226.26 Purpose of Initial Screening

Concern: *The purpose of the initial screening shall be to determine the need for referral for an MDE to determine eligibility for early intervention services or tracking.*

Issue: The screening process should not be used to determine eligibility which is what it does if a child is refused an MDE based on the results of the screening. This is of great concern in light of the haphazard "screening" process that occurs across the state.

Recommendation:

1. More clearly define "screening."
2. Develop a universal screening procedure to be implemented by all legal entities.
3. Add to the regulation at section 4226.28 (4a) that requires the parent to be informed of the screening results in writing and which states their right to an MDE in the event that they disagree with the screening results.

#4225.27 Content of Screening

Concern: *Entire section.*

Issue: The screening process is inadequate and subject to great variability across the state and even within each legal entity.

Recommendation: Require a screening process that is standardized, universal and implemented and interpreted by trained professionals.

#4226.35 Training

Concern: *Professional and paraprofessional personnel who serve on the interdisciplinary team or who provide direct care or service to a child shall be certified, licensed or registered, as approved by the Department of State, for the discipline that they are providing.*

Issue: What job category does this pertain to? I assume therapists but am not sure since paraprofessionals are included.

Recommendation: Include in the section job titles for whom the section applies.

#4226.36 Preservice Training

Concern: (a) *Training. . .(for all staff), as well as for the early interventionist and other personnel who work directly with the child. . .*

Issue: It is unclear what (for all staff) means when it seems to be explained by what follows.

Recommendation: Delete (for all staff).

#4226.37 Annual Training

Concern: (a) *relating to 24 hours of in-service training specific to early intervention services.* (b) *relating to training in certification areas that require annual recertifications.*

Issue: Requiring <u>more</u> than 24 hours of training annually is a burden to the employee as well as a financial burden to the provider. It also takes away time available to provide service to children and families.

Recommendation: Combine the elements of (a) and (b) to require 24 hours of training annually in the combined topics. See the recommendation at 4226.35-.37 for wording.

<u>#4226.38</u> Criminal history records check

Concern: *The section details criminal history record checks.*
Issue: There is no requirement for child abuse clearance through the Department of Public Welfare under Act 33.

Recommendation: Require all staff who have direct child contact to comply with Act 33.

<u>#4226.54</u> Requirements and Qualifications (relating to service coordination)

Concern: (a) *A minimum of one service coordinator intervention service shall be employed directly or through subcontract by the legal entity.*

Issue:
1. Lacks clarity.
2. A maximum caseload size should be added to safeguard ability of the service coordinator to provide appropriate services since this is a critical activity in early intervention.

Recommendation:
1. Delete the words "intervention service" from the sentence.
2. Set a maximum caseload size of 35 children per service coordinator.

Concern: (a) *A service coordinator shall have one of the following groups of qualification:*
(1),(2)

Issue: Qualifications are insufficient for the job responsibilities.

Recommendation: Delete (1) and (2). Add a new (1). A bachelor's degree in a field related to early childhood, special education, psychology, social work or family studies and one year of paid experience working directly with children and families.

Issue: Volunteer experience is not recognized in the State Civil Service Commission and is not a good indicator of the acquisition of needed skills since there is not usually a formal evaluation of a volunteer's work for a reference point when hiring.

Recommendation: Delete volunteer experience.

Issue: Qualifications should incorporate the tenets of IDEA, Part C, Section 303.344(g):

Recommendation: Include in the qualifications: "Service coordinators must be persons who have demonstrated knowledge and understanding about:

1. Infants and toddlers who are eligible under this part;
2. Part C of the Act and the regulations under this part; and
3. The nature and scope of services available under the State's early intervention program; the systems of payment for services in the state, and other pertinent information.

#4226.55 Early Interventionist

Concern: *The title.*

Issue: Is this a general term for all staff who provide direct service to the child and family, excluding the service coordinator? Or is it the person who provides special instruction?

Recommendation: Define early interventionist as the person who provides special instruction. Consider adding a section to define other early intervention personnel, i.e. therapists, supervisors, aides, etc.

Concern: (2) *Implementing the Child's IFSP directly or by supervising the implementation of services provided by other early intervention personnel.*

Issue: If early interventionist means the person who provides special instruction, then it would be unacceptable for that position to be supervising others. If early interventionist includes supervisory and/or management personnel, then the entire responsibilities section becomes a problem.

Recommendation: delete from ". . .or by supervising" etc. to "other early interventionist personnel."

Concern: (3) *Working with the family to assure that the needs of the child and family are met.*

Issue: This is a service coordination responsibility.

Recommendation: Delete (3) from the section.

#4226.56 Requirements and Qualifications

Concern: (a) *An early interventionist shall have one of the following groups of qualifications: (1) and (2).*

Issue: The qualifications are inadequate to carry out the job responsibilities, particularly when these responsibilities are carried out in the home and community where there is only intermittent supervision available.

Recommendation: (1) A bachelor's degree in a field related to special education, early childhood education, psychology or other fields which relate directly to child development or child disability. Delete the requirement of experience; the field needs to compete with the education system for these people.

Issue: Need for specialized training for providers working with children having low incidence disabilities.

Recommendation: Add a section which states "All personnel who work with children who have low incidence disabilities must be specifically trained to meet the needs of the children with these disabilities."

Issue: Volunteer experience.

Recommendation: Volunteer experience is a poor indicator of the acquisition of needed skills since there is not usually a formal evaluation of a volunteer's work for reference point when hiring.

Concern: (b) *An early interventionist shall obtain six credit hours annually. . .*

Issue: This is an undue hardship on employees who are underpaid, are already required to do at least 24 hours of in-service training and who already have degrees in these areas. It is also unreasonable to expect this requirement to be a condition of employment forever. This requirement also has cost implications for the provider. According to information from the U.S. Department of Labor, this would be considered "involuntary attendance" and would be considered hours worked. The provider would have to pay for all hours in the classroom. Also, the Portal-to-Portal Act would require that time and travel expense would have to be paid if the employee had to leave work and go directly to class and/or had to return to work from class. It is unclear, at this time, whether the employer would have to pay tuition in all cases; however, due to this provider's union contract, we would be required to do so.

Recommendation: Delete this requirement.

#4226.62 MDE

Concern: (2) *The initial MDE is conducted by personnel independent of service provision.*

Issue: Precludes anyone who does even one MDE from ever providing early intervention services. Also, there may be appropriate exceptions to independent MDE provision. One may be in geographic areas where appropriate professionals who could do MDE's are also the only one who can provide the needed service. another would be in the case of parental request to have the evaluation and the service be provided by the same professional.

Recommendation: Add the word future before service provision. Add a paragraph allowing for exceptions to this regulation that would permit the legal entity the ability to provide the MDE and the needed service in the manner most appropriate for the child and

family.

Concern: (2) *The annual MDE will be composed of the family, service coordinator, anyone whom the parent would like to invite and at least one other professional.*

Issue: This does not constitute a multidisciplinary team due to the fact that only one professional discipline is required to be represented. Service coordination is a service, not a discipline. The federal definition of multidisciplinary (Part C, Sec. 303.17) "...means involvement of two or more disciplines or professionals. . ."

Recommendation: Expand the MDE team to include two disciplines or professionals.

#4226.72 Procedures for IFSP development, review and evaluation.

Concern: (b) *The IFSP shall be evaluated once a year and the family shall be provided a review of the plans at six month intervals, or more often based on infant or toddler and family needs.*

Issue: The "or more often. . ." is too subtle.

Recommendation: Please add to the end of the sentence ". . .and/or as requested by the family or other team member."

#4225.73 Participants in IFSP meetings and periodic reviews.

Concern: (4) *The service coordinator. . .responsible for implementation of the IFSP.*

Issue: The service coordinator or designee of the legal entity who has the authority to commit the resources of the legal entity to carry out the IFSP should be at the IFSP meetings and reviews.

Recommendation: Add to the end of the sentence "and who has the authority to commit the resources of the legal entity to carry out the IFSP.

Concern: (6) *Persons who will be providing services to the child or family, as appropriate.*

Issue: Presence of providers of service must be required to be present or represented.

Recommendation: Delete the words as appropriate.

#4225.74 Content of IFSP

Concern: (a) *"Frequency" and "intensity"*. . .
(b) *"Method"*. . .
[iv) *"Location"*. . .

Issue: In the past, it has been known that team decisions around these three areas have not always been honored by the legal entity. The IFSP then becomes driven by cost factors or other agendas.

Recommendation: In the regulations a statement needs to be made that indicates respect and commitment to the teams' decisions by the legal entity. Authority for this comes from a letter from OSEP to Mr. John Heskett (5/26/99), "In all instances, individual determinations must be made by the participants on the Individual Family Service Plan (IFSP) team, which includes the parent(s), regarding the services to be provided to an infant or toddler. . ."

#4226.74

Concern: (5) *Natural environments.*
Issue: Statement needs strengthening.

Recommendation: Add to the paragraph, "If it is the decision of the IFSP team that it is appropriate for all or some of the services to be provided in settings other than the natural environment, justification shall be made in writing in the IFSP during the initial and/or annual IFSP meeting. Funding for the services provided in settings other than natural environments will not be unreasonably withheld by the legal entity.

#4226.74

Concern: (7) *Dates; duration of services. The IFSP shall include the following:*
(i) The projected dates for initiation of services. . .

Issue: There are no number of days specified for implementation of the IFSP. "As soon as possible" is too subjective.

Recommendation: Delete (i) as it is and replace it with: The IFSP must be implemented within 21 days of the IFSP meeting unless otherwise requested by the parent(s).

#4226.75

Concern: (8) *Service coordinator. The identification of the service coordinator from the profession most immediately relevant to the infant's or family's needs...*

Issue: While this is the way service coordination should take place on a truly transdisciplinary team, it is not the current reality. There is an existing independent service coordination system in place in each of the legal entities. If a family believes that the best team member to coordinate services for their child is the physical therapist and not the service coordinator, it raises the issue of independence of service provision and service coordination, and due to the rate structure, the PT's hours doing service coordination would not be billable.

Recommendation: Delete (8).

#4226.72 (9) Transition for early intervention services.
Concern: (B) *Review the child's program options for the period from the child's 23rd birthday through the remainder of the school year.*

Issue: 23rd birthday must be an error.

Recommendation: Change to 3rd birthday.

Concern: [c](iii) *This section does not exist currently.*

Issue: Pendency is not addressed here.

Recommendation: Please consider discussing pendency in this section as well as in 4226.104.

#4226.101

Concern: (1) *To be accompanied and advised by counsel and by individuals with special knowledge or training. . .*

Issue: Many families do not have the means to hire legal counsel.

Recommendation: Change to: To be accompanied and advised by counsel and/or by individuals. . .

#4226.102 Impartial hearing officer

Concern: *There is not a section which states the qualifications or the duties of the hearing officer.*

Issue: Needed for clarity and consistency.

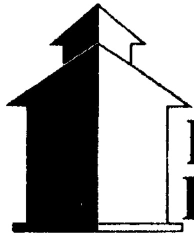
Recommendation: Add qualifications and duties of the hearing officer to the section.

#4226.103 Convenience of proceedings; timelines

Concern: *A proceeding for implementing the administrative resolution process shall be carried out at a time and place that is reasonably convenient to the parents.*

Issue: Does not meet standard of IDEA, PART C, Section 303.423(b).

Recommendation: Add "and within 30 days" to the end of the sentence.



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Original: 2122

July 21, 2000

Independent Regulatory Review Commission
14th Floor, 333 Market Street
Harrisburg, PA 17101

Dear Commissioners:

Enclosed you will find the comments of the Education Law Center pertaining to the proposed regulations to govern the Infants and Toddlers with Disabilities Program. This is a very important program for a very vulnerable population. The proposed regulations have serious flaws, both legal and practical, which I detail in my comments.

If I can be of further assistance, please feel free to contact me.

Very truly yours,

Janet F. Stotland
Co-Director

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