

<h1 style="text-align: center;">Regulatory Analysis Form</h1>		This space for use by IRRC RECEIVED 2001 MAR 20 PM 12:30 REVIEW COMMISSION	
		IRRC Number: 2144	
(1) Agency State Board of Education			
(2) I.D. Number (Governor's Office Use) 006-270			
(3) Short Title      Special Education Services and Programs			
(4) PA Code Cite 22 Pa. Code Chapter 14 and 22 Pa. Code Chapter 342		(5) Agency Contacts & Telephone Numbers Primary Contact: Peter H. Garland 787-3787 Secondary Contact:	
(6) Type of Rulemaking (check one) Proposed Rulemaking Final Order Adopting Regulation <input checked="" type="checkbox"/> X Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached? No Yes: By the Attorney General Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. <p>These regulations establish procedures for the identification of students who are disabled and in need of special education services and programs and set forth requirements and procedures for the delivery of those services and programs. This final-form regulatory package revises 22 Pa. Code, Chapter 14 and deletes Chapter 342.</p>			
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. <p>Public School Code of 1949 (24 P.S. 1-101-26-2606-B).          Individuals with Disabilities Education Act (IDEA), as amended June 4, 1997          34 CFR Part 300 (relating to assistance to states for the education of children with disabilities) as published in the <i>Federal Register</i>, March 12, 1999, Vol. 64, No. 48.  <i>PARC v. Commonwealth</i> Consent Decree</p>			

## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is required by the statutes, regulations and court decisions as identified in #9 above.

To qualify for continued funding under the IDEA, final regulation is required by March 2, 2001.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulation addresses the need for direction and requirement in the provision of special education services and programs to students with disabilities and the responsibilities of schools to provide them free appropriate public education.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Prior to developing statute and regulation to protect students with disabilities, services and programs provided to this population were inadequate to meet their needs.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The approximately 230,000 students with disabilities will benefit directly from this regulation by receiving free appropriate public education. Parents, teachers, and school administrators will benefit by having clear regulation defining their responsibilities to students with disabilities.

--

**Regulatory Analysis Form**

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No persons will be adversely affected by this regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Approximately 125,000 teachers, administrators and support personnel who may work with students with disabilities will be required to comply with this regulation.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Board has worked for three years in the development of this regulation and sought input and involvement from parents, teachers and administrators, special education advocates, attorneys and teacher preparation faculty throughout that period. Opportunities for comment were provided through Committee meetings, roundtable discussions, public hearings and written comment periods.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Savings of \$4.75 million are anticipated through these regulations. Savings are based on the change to a three-year re-evaluation cycle for most students from the current requirement for re-evaluation for all students every two years. The *PARC v. Commonwealth* Consent Decree requires that students with mental retardation be re-evaluated every two years. It is estimated that with the current student population, this change would require 38,333 fewer re-evaluations per year. The cost to school districts of the hours saved is calculated at \$4.75 million in the first year after the effective date of the regulation.

It is noted that the changes in federal statute and regulation are likely to lead to increased costs for school districts in terms of both time and paperwork responsibilities. These changes include the requirement of regular education teacher participation in IEP meetings, new requirements for student goals and benchmark measures in the IEP and more frequent issuance of procedural safeguard notices. These increased costs will minimize the potential savings to school districts described above.

**Regulatory Analysis Form**

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

N/A

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

N/A

### Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community	0	4.75 million	4.99 million	5.2 million	5.6 million	5.9 million
Local Government						
State Government						
Total Savings	0	4.75 million	4.99 million	5.2 million	5.6 million	5.9 million
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government						
Total Costs						
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

Savings are based on the change to a three-year re-evaluation cycle for most students from the current requirement for re-evaluation for all students every two years. The *PARC v. Commonwealth* Consent Decree requires that students with mental retardation be re-evaluated every two years. It is estimated that with the current student population, this change would require 38,333 fewer re-evaluations per year. The cost to school districts of the hours saved is calculated at \$4.75 million in the first year after the effective date of the regulation.

It is noted that the changes in federal statute and regulation are likely to lead to increased costs for school districts in terms of both time and paperwork responsibilities. These changes include the requirement of regular education teacher participation in IEP meetings, new requirements for student goals and benchmark measures in the IEP and more frequent issuance of procedural safeguard notices. These increased costs will minimize the potential savings to school districts described above.

--

### Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
State funds	\$631.7 million	\$677.6 million	\$719.5 million	\$783.1 million
Federal funds	\$118.6 million	\$138.9 million	\$162.6 million	\$211.1 million

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

These regulations are designed to enable schools to meet the responsibilities of providing free appropriate public education to students and children with disabilities effectively and efficiently. Without clear regulation to guide these responsibilities, students will not be served.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Nonregulatory options were not considered since current rules for special education are in regulation.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

N/A



## Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

Previous regulations for special education were more stringent than Federal standards. In considering revisions to the regulations, the Board carefully considered all areas in excess of federal requirements. In many areas the more stringent requirement is deleted (e.g., changing from a two-year re-evaluation cycle to a three-year cycle; and eliminating the mandate for Instructional Support Teams). In other areas, the more stringent state regulation has been modified to offer greater flexibility (e.g., providing options to the caseload chart). Finally, in certain areas strong public support was voiced to retain current requirements (e.g., prehearing conferences)

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

All states must follow the Federal statute and regulation in the design of their rules for special education services and programs. As a result, Pennsylvania rules for special education do not place the Commonwealth at a competitive disadvantage.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

Yes. The Department of Public Welfare's proposed regulations on Early Intervention Services (55 Pa. Code Chapters 4225 and 4226). Published in the Pennsylvania Bulletin on June 3, 2000.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

Public hearings and roundtable discussions were held during the development of the regulations and during the public comment period. Hearings were held on September 15, 2000 in Harrisburg, September 21, 2000 in King of Prussia, and September 25, 2000 in Gibsonia.



--

**Regulatory Analysis Form**

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports that will be required as a result of implementation, if available.

No substantive changes are anticipated as a result of these regulations for the Commonwealth or local education agencies. Changes in paperwork responsibilities will be due to changing federal requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

N/A

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will be effective upon final publication in the Pennsylvania Bulletin.

(31) Provide the schedule for continual review of the regulation.

The effectiveness of Chapter 14 will be reviewed by the State Board of Education every four years in accordance with the Board's policy and practice respecting all regulations promulgated by the Board.

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)

RECEIVED

2001 MAR 20 PM 12:30

REVIEW COMMISSION

#2144

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

State Board of Education  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 006-270

DATE OF ADOPTION: March 15, 2001

BY: [Signature]

TITLE: Executive Director  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

BY: [Signature]

3/19/01  
DATE OF APPROVAL

(Deputy General Counsel)  
(Chief Counsel, Independent Agency)  
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

Revised Final-Form

State Board of Education  
Title 22 - Education  
Chapters 14 and 342  
Special Education Services and Programs

## PREAMBLE

State Board of Education  
22 PA. Code – Education  
Chapter 14 - Special Education Services and Programs  
Chapter 342 - Special Education Services and Programs

The State Board of Education (Board) amends Title 22 of the *Pennsylvania Code* Chapter 14 (relating to special education services and programs) and deletes Chapter 342 (standards relating to special education services and programs) as set forth in Annex A, under the authority of the Public School Code of 1949 (24 P.S. 1-101 – 26-2606-B).

Notice of proposed rulemaking was published at 30 Pa.B. 4628 (September 2, 2000) with an invitation to submit written comments within 30 days. In addition, the Board held hearings on the proposed regulations on September 15, 21, and 25, 2000.

These regulations establish procedures for the identification of students who are disabled and in need of special education services and programs and set forth requirements and procedures for the delivery of those services and programs.

### *Response to Comments*

### *Adoption by Reference*

Commentators and the House Education Committee recommended that the appropriate text of the Federal rules from 34 CFR Part 300 be incorporated in the text of these regulations. Other commentators supported the choice to adopt by reference. Early in their work, the Board's Standing Committee on Special Education studied and reviewed drafts of efforts to incorporate the Federal rules in the text of Chapter 14 and

determined that doing so would lead to unnecessarily lengthy regulations and lead to possible discrepancies between Federal intent and State intent. As a result, these regulations have been drafted to incorporate Federal rules by reference, adding in those areas where the Federal rules require greater detail, where Pennsylvania statute or court decision requires specific language and where Pennsylvania practices are different from those found in other jurisdictions. Federal rules are adopted by reference in many Pennsylvania regulations. The revised final-form regulation has added to all federal regulation references in §14.102 parenthetical descriptions of titles of those sections as provided in the Federal regulations to assist the reader. The Department of Education has and will continue to develop publications and other media to inform parents, teachers and administrators of their rights and responsibilities under both Federal and State statutes and regulations in regard to children with disabilities. Documents and web-sites which clearly link Federal and State regulations in a “side-by-side” format will be available upon final publication.

*Definitions—14.101*

Definition of Mentally Retarded—Public commentators and the Independent Regulatory Review Commission (IRRC) stated that the proposed regulation relying on the Federal definition is less specific than that currently found in Chapter 342 which established an IQ of 80 or higher as a cutoff. By diminishing possible reliance on a single intelligence measure, multidisciplinary evaluation teams will be able to perform comprehensive evaluations, which may include IQ scores, to determine if a student has subaverage general intellectual functioning.

Defining Student with a Disability---The IRRC recommended that a definition of “student with a disability” be added for clarification. A definition has been added in this final-form regulation.

Definitions of Early Intervention Services and Mutually Agreed-upon Written Arrangements –The IRRC recommended revising the definitions of “early intervention services” and “mutually agreed-upon written arrangements.” The revised final-form has deleted prior definitions and inserted references to the Early Intervention Services System Act in defining these two terms.

Definition of parent—The IRRC recommended clarifying the role of foster parents in obtaining special education or early intervention services. A definition of parent is added in the revised final-form which includes foster parents so that foster parents in the Commonwealth will henceforward be able to act as parents.

*Screening—14.122*

Involvement of parents—Commentators, the House Education Committee and the IRRC asked that provisions be added to the screening process requirements that would involve parents in this process. Language has been added at 14.122(c)(7).

*Evaluation—14.123*

Group of qualified professionals—The IRRC commented that this provision is vague and should be clarified. The professionals involved in each evaluation must be determined on a case-by-case basis. Listing all professionals who might serve would be nearly impossible to identify for the wide range of disabilities, be overly prescriptive and result in unnecessarily large evaluation teams. Ongoing guidance from the Department will be provided to help parents, teachers and administrators understand the professionals needed to evaluate students for disabilities.

School Psychologists—Commentators, the House Education Committee and the IRRC asked the Board to restore the requirement for school psychologists to be members of every multidisciplinary evaluation team. Other commentators supported the proposed rulemaking so that school psychologists would not be required to participate in evaluations which might be purely physical in nature (e.g., deafness and hard of hearing, speech pathology). The final-form regulation has been revised to list those areas where a school psychologist must be part of the evaluation team. Similar language has been added to 14.124.

*Implementation of the IEP—14.131*

Implementation of the IEP within 10 days—Commentators, the House Education Committee and the IRRC recommended that current language requiring the IEP to be implemented within 10 days be restored. The final-form regulation has been changed to include that requirement.

*Educational Placement—14.141 and 14.142*

A number of issues regarding educational placement were raised by commentators, the House Education Committee and the IRRC. These included (1) “recommended” caseloads; (2) caseload limitations to be followed in IU-operated or multi-district classes; (3) class size limitations; (4) the involvement of parents or teachers in the adoption of district caseloads; (5) caseloads and class sizes for regular education classes in which students with disabilities receive programs and services; and (6) age range limitations for special education classes. Public comments were received that favored educational placement as described in the proposed rulemaking as well as in opposition to it.

As a result, the final-form regulation has been revised in a number of areas. Caseload limitations are now mandatory and a process is established where school districts may request a variance from the caseload limitations by application to the Secretary. As part of the application materials, the district must describe how parents, teachers and others were able to review and offer comments on the requested caseload variance. Language regarding caseload for classes attended by students from more than one district has been clarified to require the caseload of the district in which the class is operated to be applied. Intermediate Unit itinerant services provided to multiple districts must follow caseload limitations.

Public comments were received that supported the elimination of class size restrictions currently found in Chapter 342. These individuals and organizations supported the flexibility permitted districts to structure and staff the programs and services as required in student IEPs. Other public commentators and the House Education Committee asked the Board to restore class size restrictions to limit possibilities for overcrowding special education classes. The Board's goal in considering changes to the current chart was to strike a balance between students' rights for a free appropriate public education (FAPE) and flexibility in staffing and scheduling necessary to provide FAPE effectively and efficiently to all students requiring special education. In its consideration of a variety of options, the Board became convinced that the Individualized Education Plan (IEP) – the document that identifies the specially-designed instruction necessary for a student to receive FAPE – is the controlling document from which school's schedule staff, programs and services. And with over 220,000 IEPs, many including a variety of instructional and related support requirements, flexibility is important to effectively and efficiently meet the requirements of those plans.

The original class size restrictions were developed in the 1970s when special education was designed to exclude rather than include children in the general curriculum and when fewer students were identified and served through special education. Since that time, the range and number of disabilities has grown as well as the range and number of educational and professional services that are necessary to address those disabilities. More importantly, the direction for the delivery of special education has changed from exclusion to inclusion.



The Board found that class size restrictions were incongruent with current practice in the delivery of special education, provided little flexibility for educational purposes, and focused compliance issues on staffing snapshots rather than on whether or not students were meeting the goals of their IEP. The Board believes that compliance should be driven by attention to the student's IEP and the effectiveness of programs designed to help the student achieve their goals as outlined in the IEP.

The Board maintains its choice to eliminate class size restrictions in the final – form regulation for four reasons: (1) there is no federal requirement to establish class sizes; (2) staffing of classes for students with disabilities must be constructed by schools from the requirements established in student IEPs and cannot be determined effectively as a uniform statewide standard; (3) caseloads provide general protections to prevent overcrowding; and (4) procedural safeguards ensure that class size cannot serve as an impediment to any student achieving his or her goals as established in the IEP.

No caseloads or class sizes are established in this final-form regulation for regular education classrooms in which students with disabilities are included for most or all of the school day. Doing so would result in class size restrictions for most classes in the Commonwealth, a decision which is currently within the purview of locally-elected school boards.

Language on age range restrictions in special education has been retained in this final-form regulation.

*Disciplinary Exclusion—14.143*

Proposed Chapter 14 contained a provision that a disciplinary exclusion of the student with a disability of 15 days or longer constituted a change in placement, triggering the convening of the IEP team. Public comments were received in support of the provision and in opposition. Those commentators requesting a change stated that the provision was in excess of the Federal requirement which stated that disciplinary exclusions which constituted a pattern would constitute a change in placement. The Board did not change the final-form regulation because the 15 day limitation creates a clear standard for all to follow.

*Public Awareness—14.152*

Comparability of Screening Requirements—Public commentators and the IRRC pointed out that the public notice requirements seeking to identify children suspected of being disabled were less detailed for early intervention than it was for school age programs. Language has been modified in the final-form to be comparable.

*Scope of Appellate Panel Review—14.162*

Language has been added to this section to clarify the scope of review by the panel of hearing officers to reflect Federal rules.

### *Representation in Due Process Hearings*

Commentators and the House Education Committee questioned the change directed by the Office of Attorney General regarding representation at due process hearings. Additional consultation affirms the position taken by the Office of Attorney General and described in the proposed rulemaking. As a result, no change is found in this final-form regulation. Some commentators stated that this provision would require parents to engage the services of attorneys in order to participate in due process hearings. Nothing in the final-form regulation limits parents' rights to represent themselves and the interests of their children in due process hearings.

### *Further response to public comment*

A document containing detailed response to comments not included here was mailed to all public commentators and provided to the Governor's Office, Standing Committees and IRRC. A copy is available from Peter H. Garland, Executive Director of the State Board of Education, 333 Market Street, Harrisburg, Pa 17126-0333, (717) 787-3787 or TDD (717) 787-7367.

### *Affected Parties*

Students who need or may need special education services and programs are affected by these regulations. The regulations also affect parents and guardians of those students by guaranteeing their participation in the process of determining services and programs

that best meet the needs of their child. School districts and intermediate units are affected through compliance with the regulations.

*Cost and Paperwork Estimates*

These regulations provide procedures for consistent implementation of existing Federal and Commonwealth law and regulation. Adopting these revisions to Chapter 14 may result in savings by changing the re-evaluation requirement from every two years to every three years (except for students who are mentally-retarded). This change could result in an approximate annual statewide savings of \$ 4.75 million for school districts.

School districts will experience additional costs over time in complying with new Federal requirements (e.g., the requirement that regular education teachers participate in IEP meetings) that might minimize the potential savings described above. New Federal rules have created additional paperwork requirements including regarding student goals and benchmarks in the IEP, and the more frequent issuance of Procedural Safeguards Notices related to IEP Team meetings, re-evaluation, and in certain disciplinary situations.

*Effective Date*

These regulations will become effective upon final publication in the Pennsylvania Bulletin.

### *Sunset Date*

The effectiveness of proposed Chapter 14 will be reviewed by the State Board of Education every 4 years, in accordance with the Board's policy and practice respecting all regulations promulgated by the Board. Thus, no sunset date is necessary.

### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act, (71 P.S. Section 745.5 (a)), on August 23, 2000 the Board submitted a copy of the proposed rulemaking published at 30 Pa.B. 4628 to the Independent Regulatory Review Commission and to the Chairpersons of the House and Senate Committees on Education for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received as well as other documentation. In preparing the final-form regulations, the Board considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P.S. §745.5a(d)), the final-form regulations were deemed approved by the Senate Education Committee on February 25, 2001 and deemed approved by the House Education Committee on February 14, 2001. IRRC met on March 8, 2001 and disapproved the final-form regulations in accordance with section 6 (a) of the Regulatory Review Act.

Under section 7(a) of the Regulatory Review Act, the State Board of Education, on March 15, 2001, served notice that the final-form regulations would be revised and promulgated pursuant to section 7(c) of the Regulatory Review Act. On March 20, 2001, the Board submitted the agency report and the revised final-form regulation under section 7(c) to the Office of the Governor, Senate Education Committee, House Education Committee and IRRC.

Under section 7(c) the revised final-form was (deemed) approved by the Senate Education Committee on \_\_\_\_\_ and (deemed) approved by the House Education Committee on \_\_\_\_\_. IRRC met on \_\_\_\_\_ and approved the revised final-form regulations.

*Contact Person*

The official responsible for information on the promulgation of these revised final-form regulations is Peter H. Garland, Executive Director of the State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 787-3787 or TDD (717) 787-7367. The contact person for the implementation of these revised final-form regulations is Francis Warkomski, Director, Bureau of Special Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 783-2311 or TDD (717) 787-7367.

The Federal regulations adopted by reference herein may be found at <http://www.ideapractices.org/lawandregs.htm> or <http://www.cisc.k12.pa.us/federalregister/>, or by requesting a copy from Dr. Warkomski.

Alternative formats of the regulations (e.g. Braille, large print, cassette tape) can be made available to members of the public upon request to Dr. Warkomski at the telephone numbers and address listed above.

### *Findings*

The Board finds that:

- (1) Public notice of the intention to adopt these regulations was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) The regulations are necessary and appropriate for the administration of the School Code.

### *Order*

The Board, acting under the authorizing statute, orders that:

- (a) The regulations at 22 Pa. Code, Chapter 14 are amended by deleting §§ 14.1-14.8, 14.21-14.25, 14.31-14.39, 14.41-14.45, 14.51-14.56, 14.61-14.68, and

14.71-14.74; and by adding §§ 14.101-14.104, 14.121-14.124, 14.131-14.133, 14.141-14.144, 14.151-14.158, 14.161-14.162 to read as set forth at Annex A. The text at 22 Pa. Code, Chapter 342, §§ 342.1-342.8, 342.21-342.25, 342.31-342.39, 342.41-342.46, 342.51-342.56, 342.61-342.68 and 342.71-342.74 is deleted.

- (b) The Executive Director will submit this order and Annex A to the Office of General Counsel and the Office of the Attorney General for review and approval as to legality and form as required by law.
- (c) The Executive Director of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) This order is effective upon final publication in the *Pennsylvania Bulletin*.

By the State Board of Education:



Peter H. Garland  
Executive Director



## STATE BOARD OF EDUCATION

### Report on Final –form Regulations 22 Pa. Code, Chapter 14 (Special Education Services and Programs)

This report of the State Board of Education (Board) is submitted pursuant to section 7-(c) of the Regulatory Review Act (71 P.S. §745.7(c)), in response to the March 8, 2001 order of the Independent Regulatory Review Commission (IRRC) in the above referenced matter.

Following receipt of IRRC's order disapproving the final-form of Chapter 14 (Special Education Services and Programs), the Board reviewed the order and its recommendations. At its regular meeting on March 15, 2001, the Board acted to proceed pursuant to section 7-(c) of the Regulatory Review Act. Enclosed with this report are the final-form regulation with revision, reflecting changes made by the Board at its meeting of March 15 to address some of the findings of the Commission and the Board's response to all of the Commission's findings.

In accordance with section 7 (a) of the Regulatory Review Act (71 P.S. § 745.7(a)) notifications of the intent of the Board to proceed pursuant to section 7 (c) of the Regulatory Review Act, were delivered on March 15, 2001 to the Governor, the chairmen and minority chairmen of the House and Senate Education Committees, and the Independent Regulatory Review Commission.

#### IRRC Comments

##### CLARITY

**IRRC recommended revising the definitions of “early intervention services” and “mutually agreed-upon written arrangements.”** The revised final-form regulation has deleted prior definitions and inserted references to the statute (Early Intervention Services System Act (11 P.S. §§875-101—875-503)) in defining these two terms.

**IRRC recommended clarifying the role of foster parents in obtaining special education or early intervention services.** In reviewing the Commission's comment regarding foster parents, the Board was persuaded that it was indeed necessary and appropriate for the Board to express a position on the role of foster parents of students with disabilities. The federal regulations allow the states to decide whether foster parents may stand in the shoes of parents when not prohibited by state law. Nothing in our laws would prohibit foster parents from exercising parental rights for students with disabilities. Thus, the Board has added a definition of parent to section 14.101, which includes foster parents so that foster parents in the Commonwealth will henceforward be able to act as parents. They will not longer have to go through the process of being appointed as surrogate parents for the child.

**IRRC recommended clarifying the definitions of “itinerant,” “resource” and “part-time” in their application to educational placement.** The Board looked carefully at these

definitions yet again and has concluded that they are sufficiently distinct to be understood not only by practitioners but by others as well. The Board would be unwilling to revert to definitions that rely on temporal percentages because the amount of time in an instructional day is not equal from district to district and such definitions limit flexibility. After considering comments on this point, the Board determined that the terms were understandable, and that no further modification was necessary.

## REASONABLENESS

**IRRC recommended inserting the references to federal regulations in corresponding sections of Chapter 14.** We respect the fact that IRRC would have chosen a different organizing scheme for the adoption by reference. The Board considered the recommendation but found that several sections of the federal regulations would be cited in a number of places. Doing so would potentially create greater confusion to the reader than by listing the section to be adopted in a single place. Specific cites will correspond in the Department's guidance documents, including a document providing federal regulations with applicable state regulations in a side-by-side format for ease of reading and reference, which will be made available when Chapter 14 is final.

To enhance clarity, the revised final-form regulation has added to all federal regulation references in § 14.102 parenthetical descriptions of the titles of those sections as provided in the Code of Federal Regulations. This is the style and format customarily used when agencies adopt other Commonwealth regulations by reference or when other regulations are cited. Although this does not go as far as recommended by IRRC, it does provide additional information so that the reader knows the topic of the incorporated regulation.

**IRRC sought additional explanation for why the Board changed the requirement for reevaluation for children in early intervention programs from every year to every two years.** During the development of the regulation, the Board was urged to make this change. Commentators indicated that early intervention children are regularly assessed, often weekly, during the course of their program, thus making a full-blown reevaluation on an annual basis unnecessary. Whenever a parent or teacher suspects that a child may have additional disabling conditions, a reevaluation may be requested. Moreover, reevaluations every two years still exceed the federal requirement for reevaluations every three years.

**IRRC recommended the restoration of class size restrictions.** The issue of caseload and class size has been a contentious issue throughout the Board's work in revising these regulations. Strong opinions in support and in opposition to class sizes have been heard throughout the public discussions on Chapter 14. Through its work, the Standing Committee on Special Education evaluated alternatives to the current chart and rationales for change. The Board's goal in considering changes to the current chart was to strike a balance between students' rights for a free appropriate public education (FAPE) and flexibility in staffing and scheduling necessary to provide FAPE effectively and efficiently to all students requiring special education. In its consideration of a variety of options, the Board became convinced that the Individualized Education Plan (IEP) – the document that identifies the specially-designed

instruction necessary for a student to receive FAPE – is the controlling document from which school schedule and staff programs and services. And with over 220,000 IEPs, many including a variety of instructional and related support requirements, flexibility is important to effectively and efficiently meet the requirements of those plans.

The original class size restrictions were developed in the 1970s when special education was designed to exclude rather than include children in the general curriculum and when fewer students were identified and served through special education. Since that time, the range and number of disabilities has grown as well as the range and number of educational and professional services that are necessary to address those disabilities. More importantly, the direction for the delivery of special education has changed from exclusion to inclusion. The Board found that class size restrictions were incongruent with current practice in the delivery of special education and focused compliance issues on staffing snapshots rather than on whether or not students were meeting the goals of their IEP.

Compliance should be driven by attention to the student's IEP and the effectiveness of programs designed to help the student achieve their goals as outlined in the IEP. Compliance which is driven by the numbers of students in a class at a point in time distracts us from the real issue—whether or not a student is succeeding in achieving the goals of his or her IEP and thus receiving FAPE.

Questions were raised about how the caseloads were determined. The source of the caseloads in Chapter 14 have been in place in regulation with minor changes for over 20 years. Few questions or comments were raised on caseload during the development of these regulations except to clarify the expectations for speech and language support. That revision was made upon recommendation by speech and language teachers.

Persons have asked why there is a class size in the gifted regulations (Chapter 16) and why there is not a class size in these regulations. To be accurate, Chapter 14 includes class sizes for the most challenged students. The final column in § 14.142 establishes class sizes ranging from 8 to 15 for students placed full time in special education classes. Thus, a fair comparison of class size can be made by comparing 20 for students who are gifted to class sizes ranging from 8 to 15 for students with disabilities. The caseload for an individual teacher established in Chapter 16 is 75 which is larger than for any of the caseloads for students with disabilities.

Many are concerned that flexibility will lead to overcrowding in special education classes. In our discussions with persons on all sides of this issue, we believe that well-developed IEPs, continual progress reporting on the goals established within each IEP, compliance monitoring by the Department, and the continuing involvement of teachers, parents and advocates would make it quite difficult for the numbers of students to grow in ways that deny FAPE.

Having considered this issue, various alternatives, and listening carefully to all parties over a three year period, the Board determined that retaining caseloads, while providing flexibility in scheduling would improve the effectiveness and the efficiency of schools in meeting students rights.

## PROCESS

**IRRC found that the Board failed to respond to a number of the Commissions and comments and provided an inadequate response to others.**

After the final-form regulatory package had been submitted to the House and Senate Education Committees, IRRC requested specific response to questions which IRRC had raised in its comments on the proposed rulemaking. A detailed response was provided to IRRC the next business day. Copies were also provided to the House and Senate Education Committees.

The Board now recognizes that the detailed response document should have been included with the regulatory package that was submitted for final rulemaking. In the future such documentation will be developed and provided to interested parties at the time of submission of the final-form regulation.

In order to remedy this oversight, included in the submission of these revised final-form regulations is the response to public comment document based on the detailed response provided to IRRC on February 14, 2001. The revised final-form regulation, a revised preamble and the response to public comment document are being provided to all public commentators at the same time that these documents are being provided to the House and Senate Education Committees and IRRC.

**ANNEX A**

**TITLE 22. EDUCATION**

**CHAPTER 14: SPECIAL EDUCATION SERVICES AND PROGRAMS**

Section 14.1 – 14.8. (Reserved).

Section 14.21-14.25. (Reserved).

Section 14.31-14.39. (Reserved).

Section 14.41-14.45. (Reserved).

Section 14.51-14.56. (Reserved).

Section 14.61-14.68. (Reserved).

Section 14.71-14.74. (Reserved).

**GENERAL PROVISIONS**

14.101 Definitions.

14.102 Purposes.

14.103 Terminology related to Federal regulations.

14.104 Educational plans.

**CHILD FIND, SCREENING AND EVALUATION**

14.121 Child find.

14.122 Screening.

14.123 Evaluation.

14.124 Reevaluation.

**IEP**

14.131 IEP.

14.132 ESY.

14.133 Behavior support.

**EDUCATIONAL PLACEMENT**

14.141 TERMINOLOGY RELATED TO Educational placement.

14.142 Caseload for special education.

14.143 Disciplinary placements.

14.144 Facilities

**EARLY INTERVENTION**

14.151 Purpose.

14.152 Public awareness.

14.153 Evaluation.

14.154 IEP.

14.155 Range of services.

14.156 System of quality assurance.

14.157 Exit criteria.

14.158 Data collection and confidentiality.

### PROCEDURAL SAFEGUARDS

14.161 Prehearing conferences.

14.162 Impartial due process hearings and expedited due process hearings.

## GENERAL PROVISIONS

### §14.101 Definitions.

In addition to the definitions in § 14.102 AND 14.103 (relating to PURPOSES; AND terminology related to Federal regulations) the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act – The Early Intervention Services System Act (11 P.S. §§875-101—875-503).

Agency - An intermediate unit, school district, approved private school, State-operated program or facility or other public (excluding Charter Schools under 24 P.S. §§17-1701-A -- 17-1732-A) or private organization providing educational services to children with disabilities or providing early intervention services.

Age of beginners - The minimum age established by the school district board of directors for admission to the district's first grade under §11.15 (relating to admission of beginners).

Department - The Department of Education of the Commonwealth.

Developmental areas – Cognitive, communicative, physical, social/emotional, and self-help.



Developmental delay – A child WHO IS LESS THAN THE AGE OF BEGINNERS AND AT LEAST 3 YEARS OF AGE is considered to have a developmental delay when one of the following exists:

- (i) The child's score, on a developmental assessment device, on an assessment instrument which yields a score in months, indicates that the child is delayed by 25% of the child's chronological age in one or more developmental areas.
- (ii) The child is delayed in one or more of the developmental areas, as documented by test performance of 1.5 standard deviations below the mean on standardized tests.

ESY – Extended school year.

Early intervention agency - An intermediate unit, school district, or licensed provider which has entered into a mutually agreed upon written arrangement with the Department to provide early intervention services to eligible young children in accordance with the Act.

Early intervention services – An appropriate educational program of specially designed instruction and related services to meet the needs of eligible young children and address the strengths and needs of the family to enhance the child's development AS DEFINED IN THE ACT.-The need for the services and programs shall be in one or more of the following areas: physical, sensory, cognitive, communicative, social-emotional, and self help.

Eligible young child - A child who is less than the age of beginners and at least 3 years of age and who meets the criteria at 34 CFR 300.7 (relating to a child with a disability).

IEP - Individualized education program.

IST - Instructional support team.

MDT - Multidisciplinary team.

Mutually agreed-upon written arrangement – An agreement between the Department and an intermediate unit, school district, or other public or private agency to provide early intervention services that comply with this chapter and the Act. AS DEFINED IN THE ACT.

PARENT – PARENT SHALL BE DEFINED AS IN 34 CFR SECTION 300.20 AND SHALL ALSO INCLUDE INDIVIDUALS APPOINTED AS FOSTER PARENTS PURSUANT TO THE JUVENILE ACT (42 PA.C.S.A. SECTION 6301 ET SEQ.).

Secretary - The Secretary of the Department.

STUDENT WITH A DISABILITY – A CHILD OF SCHOOL AGE WHO MEETS THE CRITERIA AT 34 CFR §300.7 (RELATING TO A CHILD WITH A DISABILITY).

**§14.102 PurposeS.**

(a) It is the intent of the Board that children with disabilities be provided with quality special education services and programs. The purposes of this chapter are to serve the following:

(1) To adopt Federal regulations by incorporation by reference to satisfy the statutory requirements under the Individuals with Disabilities Education Act (20 U.S.C.A. §§1400-1419) and to ensure that:

(i) Children with disabilities have available to them a free appropriate public education which is designed to enable the student to participate fully and independently in the community, including preparation for employment or higher education.

(ii) The rights of children with disabilities and parents of these children are protected.

(2) To adopt, except as expressly otherwise provided in this chapter, the requirements of 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities) as published at 64 FR 12418 – 12469 ( March 12, 1999). The following sections are incorporated by reference.

(i) 34 CFR 300.4-300.6. (DEFINING THE TERMS ACT; ASSISTIVE TECHNOLOGY DEVICE; ASSISTIVE TECHNOLOGY SERVICE)

(ii) 34 CFR 300.7(a) and (c). (DEFINING THE TERM CHILD WITH A DISABILITY)

(iii) 34 CFR 300.8—300.24 (DEFINING THE TERMS CONSENT; DAY; BUSINESS DAY; SCHOOL DAY; EDUCATIONAL SERVICE AGENCY;

EQUIPMENT; EVALUATION; FREE APPROPRIATE PUBLIC EDUCATION;  
INCLUDE; INDIVIDUALIZED EDUCATION PROGRAM;  
INDIVIDUALIZED EDUCATION PROGRAM TEAM; INDIVIDUALIZED  
FAMILY SERVICE PLAN; LOCAL EDUCATIONAL AGENCY; NATIVE  
LANGUAGE; PARENT; PERSONALLY IDENTIFIABLE; PUBLIC AGENCY;  
QUALIFIED PERSONNEL; AND RELATED SERVICES)

(iv) 34 CFR 300.26 (DEFINING THE TERM SPECIAL EDUCATION)

(v) 34 CFR 300.28 and 300.29 (DEFINING THE TERMS SUPPLEMENTARY  
AIDS AND SERVICES; AND TRANSITION SERVICES)

(vi) 34 CFR 300.121—300.125 (RELATING TO FREE APPROPRIATE  
PUBLIC EDUCATION (FAPE); EXCEPTION TO FAPE FOR CERTAIN  
AGES; FULL EDUCATIONAL OPPORTUNITY GOAL (FEOG); FEOG –  
TIMETABLE; AND CHILD FIND)

(vii) 34 CFR 300.138 and 300.139 (RELATING TO PARTICIPATION IN  
ASSESSMENTS; AND REPORTS RELATING TO ASSESSMENTS)

(viii) 34 CFR 300.300 (RELATING TO PROVISION OF FAPE)

(ix) 34 CFR 300.302—300.309 (RELATING TO RESIDENTIAL PLACEMENT; PROPER FUNCTIONING OF HEARING AIDS; FULL EDUCATIONAL OPPORTUNITY GOAL; PROGRAM OPTIONS; NONACADEMIC SERVICES; PHYSICAL EDUCATION; ASSISTIVE TECHNOLOGY; AND EXTENDED SCHOOL YEAR SERVICES)

(x) 34 CFR 300.311(b) and (c) (RELATING TO FAPE REQUIREMENTS FOR STUDENTS WITH DISABILITIES IN ADULT PRISONS)

(xi) 34 CFR 300.313 (RELATING TO CHILDREN EXPERIENCING DEVELOPMENTAL DELAYS)

(xii) 34 CFR 300.320 and 300.321 (RELATING TO INITIAL EVALUATIONS; AND REEVALUATIONS)

(xiii) 34 CFR 300.340 (RELATING TO DEFINITIONS RELATED TO IEPs)

(xiv) 34 CFR 300.342—300.346 (RELATING TO WHEN IEPs MUST BE IN EFFECT; IEP MEETINGS; IEP TEAM; PARENT PARTICIPATION; AND DEVELOPMENT, REVIEW, AND REVISION OF IEP)

(xv) 34 CFR 300.347 (a), (b) and (d) (RELATING TO CONTENT OF IEP)

(xvi) 34 CFR 300.348—300.350 (RELATING TO AGENCY RESPONSIBILITIES FOR TRANSITION SERVICES; PRIVATE SCHOOL PLACEMENTS BY PUBLIC AGENCIES; AND IEPS - ACCOUNTABILITY)

(XVII) 34 CFR 300.401 (REGARDING RESPONSIBILITY OF STATE EDUCATIONAL AGENCY IN CONNECTION WITH CHILDREN WITH DISABILITIES IN PRIVATE SCHOOLS PLACED OR REFERRED BY PUBLIC AGENCIES)

(~~xvii~~) (XVIII) 34 CFR 300.403 (RELATING TO PLACEMENT OF CHILDREN BY PARENTS IF FAPE IS AT ISSUE)

(~~xviii~~) (XIX) 34 CFR 300.450—300.462 (RELATING TO CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS)

(~~xix~~) (XX) 34 CFR 300.500—300.515 (REGARDING CERTAIN DUE PROCESS PROCEDURES FOR PARENTS AND THEIR CHILDREN)

(~~xx~~) (XXI) 34 CFR 300.519—300.529 (RELATING TO DISCIPLINE PROCEDURES)

~~(xxi)~~ (XXII) 34 CFR 300.531—300.536 (REGARDING CERTAIN PROCEDURES FOR EVALUATION AND DETERMINATION OF ELIGIBILITY)

~~(xxii)~~ (XXIII) 34 CFR 300.540—300.543 (RELATING TO ADDITIONAL PROCEDURES FOR EVALUATING CHILDREN WITH SPECIFIC LEARNING DISABILITIES)

~~(xxiii)~~ (XXIV) 34 CFR 300.550—300.553 (RELATING TO LEAST RESTRICTIVE ENVIRONMENT (LRE) INCLUDING GENERAL LRE REQUIREMENTS; CONTINUUM OF ALTERNATIVE PLACEMENTS; PLACEMENTS; AND NONACADEMIC SETTINGS)

~~(xxiv)~~ (XXV) 34 CFR 300.560—300.574(A) AND (B) (PROVIDING FOR CONFIDENTIALITY OF INFORMATION)

~~(xxv)~~ (XXVI) 34 CFR 300.576 (RELATING TO DISCIPLINARY INFORMATION)

(3) To specify how the Commonwealth will meet its obligations to suspected and identified children with disabilities who require special education and related services to reach their potential.

(4) To provide to the Commonwealth, through the Department, general supervision of services and programs provided under this chapter.

(b) To provide services and programs effectively, the Commonwealth will delegate operational responsibility for school aged students to its school districts to include the provision of child find duties prescribed by 34 CFR 300.125(a) (relating to child find).

**§14.103 Terminology related to Federal regulations.**

For purposes of interfacing with 34 CFR Part 300, the following term applies, unless the context clearly indicates otherwise:

Local educational agency - Where the federal provision uses the term “local educational agency,” for purposes of this Chapter, the term means an intermediate unit, school district, State operated program or facility or other public organization providing educational services to children with disabilities or providing early intervention services. APPLICABILITY OF THIS TERM TO PUBLIC CHARTER SCHOOLS IS FOUND IN 22 PA. CODE, CHAPTER \_\_\_\_\_.  
*(EDITOR’S NOTE: THE BLANK REFERS TO PROPOSED CHAPTER 711, CHARTER SCHOOL SERVICES AND PROGRAMS FOR CHILDREN WITH DISABILITIES)*

**§14.104 Educational plans.**

(a) Each school district shall develop a special education plan ALIGNED WITH THE STRATEGIC PLAN OF THE SCHOOL DISTRICT UNDER §4.13 (RELATING TO STRATEGIC PLANS). THE SPECIAL EDUCATION PLAN SHALL BE DEVELOPED every 3 years consistent with the 3-year review cycle of the strategic



plan of the school district under §4.13 (relating to strategic plans). The Secretary will prescribe the format, content and time for submission of the special education plan.

- (b) Each school district's special education plan shall specify special education programs that operate in the district and those that are operated in the district by the intermediate units, area vocational technical schools and other agencies.
- (c) Each school district's special education plan shall include procedures for the education of all students with a disability who are residents of the district including those receiving special education in approved private schools and students with a disability who are nonresidents placed in private homes or institutions in the school district under §§1305, 1306, and 1306.2 of the Public School Code of 1949 (24 P.S. §§13-1305, 13-1306 and 13-1306.2).
- (d) Each intermediate unit shall prepare annually and submit to the Secretary a special education plan specifying the special education services and programs to be operated by the intermediate unit. The Secretary will prescribe the format, content and time for submission of the intermediate units' plans.
- (e) Each early intervention agency shall develop an early intervention special education plan every 3 years.
- (f) The Department will approve plans in accordance with the following criteria:
  - (1) Services and programs are ~~adequate in quantity and variety~~ DESIGNED to meet the needs of students identified as children with disabilities within the school district or intermediate unit or eligible young children within the early intervention agency.

(2) The full range of services and programs under this chapter are available to children with disabilities and eligible young children.

(3) The plan meets the specifications defined in this chapter and the format, content, and time for submission of the agency plans prescribed by the Secretary.

(g) Portions of the plans that do not meet the criteria for approval will be disapproved.

Prior to disapproval, Department personnel will discuss disapproved portions of the plan and suggest modifications with appropriate intermediate unit or school district personnel. Portions of the plan that are not specifically disapproved will be deemed approved.

(h) When a portion of an intermediate unit, school district or early intervention plan is disapproved, the Department will issue a notice specifying the portion of the plan disapproved, and the rationale for the disapproval and the opportunity for a hearing under 2 Pa. C.S. §§501-508 and 701-704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice Procedure). If requested, the Department will convene a hearing within 30-calendar days after the receipt of the request. The Department will render a decision within 30-calendar days following the hearing.

### **CHILD FIND, SCREENING AND EVALUATION**

#### **§14.121 Child find.**

- (a) In addition to the requirements incorporated by reference in 34 CFR 300.125(a)(i) (relating to child find), each school district shall adopt and use a public outreach awareness system to locate and identify children thought to be eligible for special education within the school district's jurisdiction.
- (b) Each school district shall conduct awareness activities to inform the public of its early intervention and special education services and programs and the manner in which to request services and programs.
- (c) Each school district shall provide annual public notification, published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the school district of child identification activities and of the procedures followed to ensure confidentiality of information pertaining to students with disabilities or eligible young children in accordance with this chapter.

**§14.122 Screening.**

- (a) Each school district shall establish a system of screening to accomplish the following:
  - (1) Identify and provide initial screening ~~and direct intervention~~ for students prior to referral for a special education evaluation.
  - (2) Provide peer support for teachers and other staff members to assist them in working effectively with students in the general education curriculum.
  - (3) Conduct hearing and vision screening in accordance with section 1402 of the Public School Code of 1949 (24 P.S. §14-1402) for the purpose of identifying

students with hearing or vision difficulty so that they can be referred for assistance or recommended for evaluation for special education.

(4) Identify students who may need special education services and programs.

(b) Each school district shall implement a comprehensive screening process. School districts may implement instructional support according to Department guidelines or an alternative screening process. School districts which elect not to use instructional support for screening shall develop and implement a comprehensive screening process that meets the requirements specified in subsections 14.122 (a) and (c).

(c) The screening process shall include:

(1) for students with academic concerns, an assessment of the student's functioning in the curriculum including curriculum-based and OR performance-based assessment.

(2) for students with behavioral concerns, a systematic observation of the student's behavior in the classroom or area in which the student is displaying difficulty.

(3) an intervention based on the results of the assessments under paragraph (1) or (2).

(4) an assessment of the student's response to the intervention.

(5) a determination as to whether the student's assessed difficulties are due to a lack of instruction or limited English proficiency.

(6) a determination as to whether the student's needs exceed the functional ability of the regular education program to maintain the student at an appropriate instructional level.

(7) ACTIVITIES DESIGNED TO GAIN THE PARTICIPATION OF PARENTS.

(d) If screening activities have produced little or no improvement within 60 school days after initiation, the student shall be formally referred for evaluation under §14.123 (relating to evaluation).

(e) Screening activities do not serve as a bar to the right of a parent to request an evaluation, at any time, including prior to or during the conduct of screening activities.

**§14.123 Evaluation.**

(a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under 34 CFR 300.534(a)(1) (relating to determination of eligibility), shall include a certified school psychologist when appropriate EVALUATING A CHILD FOR AUTISM, EMOTIONAL DISTURBANCE, MENTAL RETARDATION, MULTIPLE DISABILITIES, OTHER HEALTH IMPAIRED, SPECIFIC LEARNING DISABILITY, AND TRAUMATIC BRAIN INJURY.

(b) In addition to the requirements incorporated by reference at 34 CFR 300.531 - 300.535, the initial evaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60 school days after the agency receives written parental consent.

**§14.124 Reevaluation.**

- (a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under 34 CFR 300.536 (relating to reevaluation), shall include a certified school psychologist where appropriate WHEN EVALUATING A CHILD FOR AUTISM, EMOTIONAL DISTURBANCE, MENTAL RETARDATION, MULTIPLE DISABILITIES, OTHER HEALTH IMPAIRED, SPECIFIC LEARNING DISABILITY, AND TRAUMATIC BRAIN INJURY.
- (b) In addition to the requirements incorporated by reference at 34 CFR 300.536 (relating to reevaluation), a reevaluation report shall be provided to the parents within 60 school days from the date that the request for reevaluation was received from the parent or teacher, or from the date that a determination is made by the agency that conditions warrant a reevaluation.
- (c) Students WITH DISABILITIES WHO ARE identified as mentally retarded shall be reevaluated at least once every 2 years.

**IEP**

**§14.131 IEP.**

- (a) Notwithstanding IN ADDITION TO the requirements incorporated by reference, the following provisions apply to IEPs:

- (1) Copies of the comprehensive evaluation report shall be disseminated to the parents at least 10 SCHOOL days prior to the meeting of the IEP team. A parent may waive this 10-day rule PROVISION.
- (2) THE IEP OF EACH STUDENT SHALL BE IMPLEMENTED AS SOON AS POSSIBLE BUT NO LATER THAN 10 SCHOOL DAYS AFTER ITS COMPLETION.
- ~~(2)~~ (3) If a student with a disability moves from one school district in this Commonwealth to another, the new district shall implement the existing IEP to the extent possible or shall provide the services and programs specified in an interim IEP agreed to by the parents. THE INTERIM IEP SHALL BE IMPLEMENTED until a new IEP is developed and implemented and OR until the completion of due process proceedings under this chapter.
- ~~(3)~~ (4) If a student with a disability moves into a school district in this Commonwealth from another state, the new school district may treat the student as a new enrollee and place the student into regular education and it is not required to implement the student's existing IEP.
- (4) (5) Every student receiving special education and related services provided for in an IEP developed prior to \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.) shall continue to receive the special education and related services under that IEP subject to the terms, limitations and conditions set forth in law.
- (b) In addition to the requirements incorporated by reference at 34 CFR 300.29, 300.344(b) and 300.347(b) (relating to transition services; IEP team; and content of

IEP), each school district shall designate persons responsible to coordinate transition activities.

**§14.132 ESY.**

This section sets forth the standards for determining whether a student with disabilities requires ESY as part of the student's program.

- (1) At each IEP meeting for a student with disabilities, the school districts shall determine whether the student is eligible for ESY services and if so, make subsequent determinations about the services to be provided.
- (2) In considering whether a student is eligible for ESY services, the IEP team shall consider the following factors, however, no single factor shall be considered determinative:

  - (i) Regression – whether the student reverts to a lower level of functioning as evidenced by a measurable decrease in skills or behaviors which occurs as a result of an interruption in educational programming.
  - (ii) Recoupment – whether the student has the capacity to recover the skills or behavior patterns in which regression occurred to a level demonstrated prior to the interruption of educational programming.
  - (iii) Whether the student's difficulties with regression and recoupment make it unlikely that the student will maintain the skills and behaviors relevant to IEP goals and objectives.



- (iv) The extent to which the student has mastered and consolidated an important skill or behavior at the point when educational programming would be interrupted.
  - (v) The extent to which a skill or behavior is particularly crucial for the student to meet the IEP goals of self-sufficiency and independence from caretakers.
  - (vi) The extent to which successive interruptions in educational programming result in a student's withdrawal from the learning process.
  - (vii) Whether the student's disability is severe, such as autism/pervasive developmental disorder, serious emotional disturbance, severe mental retardation, degenerative impairments with mental involvement and severe multiple disabilities.
- (3) Reliable sources of information regarding a student's educational needs, propensity to progress, recoupment potential, and year-to-year progress may include the following:
- (i) Progress on goals in consecutive IEPs.
  - (ii) Progress reports maintained by educators, therapists and others having direct contact with the student before and after interruptions in the education program.
  - (iii) Reports by parents of negative changes in adaptive behaviors or in other skill areas.
  - (iv) Medical or other agency reports indicating degenerative-type difficulties, which become exacerbated during breaks in educational services.
  - (v) Observations and opinions by educators, parents and others.
  - (vi) Results of tests including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments and other equivalent measures.
- (4) The need for ESY services will not be based on any of the following:
- (i) The desire or need for day care or respite care services.
  - (ii) The desire or need for a summer recreation program.

(iii) The desire or need for other programs or services which, while they may provide educational benefit, are not required to ensure the provision of a free appropriate public education.

**§14.133 Behavior support.**

(a) Positive rather than negative measures shall form the basis of behavior management SUPPORT programs. Behavior management SUPPORT programs include a variety of techniques to develop and maintain skills that will enhance an individual student's or young child's opportunity for learning and self-fulfillment. The types of intervention chosen for a particular student or young child shall be the least intrusive NECESSARY.

(b) Notwithstanding the requirements incorporated by reference at 34 CFR 300.24(b)(9)(vi), (13)(v), 300.346(a)(2)(i) and (d) and 300.520(b) and (c) (relating to related services; development, review, and revision of IEP; and authority of school personnel), with regard to a child's behavior, the following words and terms when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Aversive techniques - Deliberate activities designed to establish a negative association with a specific behavior.

Behavior management SUPPORT - The development, change and maintenance of selected behaviors through the systematic application of behavior change techniques.

Positive techniques - Methods which utilize positive reinforcement to shape a student's behavior, ranging from the use of positive verbal statements as a reward for good behavior to specific tangible rewards.

Restraints - Devices and techniques designed and used to control acute or episodic aggressive behaviors or to control involuntary movements or lack of muscular control due to organic causes or conditions. The term includes physical and mechanical restraints.

- (c) Restraints to control acute or episodic aggressive behavior may be used only when the student is acting in a manner as to be a clear and present danger to himself, to other students or to employees, and only when less restrictive measures and techniques have proven to be or are less effective. The use of restraints to control the aggressive behavior of an individual student shall cause a meeting of the IEP team to review the current IEP for appropriateness and effectiveness. The use of restraints may not be included in the IEP for the convenience of staff, as a substitute for an educational program, or employed as punishment.
- (d) Mechanical restraints, which are used to control involuntary movement or lack of muscular control of students when due to organic causes or conditions, may be employed only when specified by an IEP and as determined by a medical professional qualified to make the determination, and as agreed to by the student's parents. Mechanical restraints shall prevent a student from injuring himself or others or promote normative body positioning and physical functioning.
- (e) The following aversive techniques of handling behavior are considered inappropriate and may not be used by agencies in educational programs:

- (1) Corporal punishment.
- (2) Punishment for a manifestation of a student's disability.
- (3) Locked rooms, locked boxes, or other locked structures or spaces from which the student cannot readily exit.
- (4) Noxious substances.
- (5) Deprivation of basic human rights, such as withholding meals, water, or fresh air.
- (6) Suspensions constituting a pattern under §14.143(a) (relating to disciplinary placement).
- (7) Treatment of a demeaning nature.
- (8) Electric shock.
- (f) Agencies have the primary responsibility for ensuring that behavior management programs are in accordance with this chapter, including the training of personnel for the use of specific procedures, methods, and techniques, and for having a written policy on the use of behavior management techniques and obtaining parent consent prior to the use of highly restraining or intrusive procedures.
- (g) In accordance with their plans, agencies may convene human rights committees to oversee the use of restraining or intrusive procedures and restraints.

## EDUCATIONAL PLACEMENT

### §14.141 TERMINOLOGY RELATED TO Educational placement.

Notwithstanding the requirements incorporated by reference with regard to educational placements: (1) ———, the following words and terms, when used in §14.142 (relating to caseload for special education), have the following meanings:

Autistic support - Services for students with the disability of autism.

Blind and visually impaired support - Services for students with the disability of visual impairment, including blindness.

Deaf and hard of hearing impaired support - Services for students with the disabilities of deafness or hearing impairment.

Emotional support – Services for students with ~~the A disability of emotional disturbance~~ WHOSE PRIMARY IDENTIFIED NEED IS EMOTIONAL SUPPORT.

Full-time - Special education classes provided for the entire school day, with opportunities for participation in nonacademic and extracurricular activities to the maximum extent appropriate, which may be located in or outside of a regular school.

Itinerant - Regular classroom instruction for most of the school day, with special education services and programs provided by special education personnel inside or outside of the regular class for part of the school day.

Learning support – Services for students with a disability whose primary identified need is academic learning.

Life skills support – Services for students with a disability focused primarily on the needs of students for independent living.

Multiple disabilities support - Services for students with multiple disabilities.

Part-time - Special education services and programs outside the regular classroom but in a regular school for most of the school day, with some instruction in the regular classroom for part of the school day.

Physical support - Services designed primarily to meet the needs of students with the disabilities of orthopedic or other health impairment.

Resource - Regular classroom instruction for most of the school day, with special education services and programs provided by special education personnel in a resource room for part of the school day.

Speech and language support - Services for students with the disability of speech and language impairment.

**§14.142 Caseload for special education.**

(A) This chart presents the recommended maximum caseload allowed on a single teacher's roll for each school district.

<i>Type of Service</i>	<i>Itinerant</i>	<i>Resource</i>	<i>Part-time</i>	<i>Full-time:</i>
<u>Learning Support</u>	<u>50</u>	<u>20</u>	<u>15</u>	<u>12</u>
<u>Life Skills Support</u>	<u>20</u>	<u>20</u>	<u>15</u>	<u>12 Elementary</u>
				<u>15 Secondary</u>

<u>Emotional Support</u>	<u>50</u>	<u>20</u>	<u>15</u>	<u>12</u>
<u>Deaf and Hearing Impaired Support</u>	<u>50</u>	<u>15</u>	<u>10</u>	<u>8</u>
<u>Blind or Visually Impaired Support</u>	<u>50</u>	<u>15</u>	<u>15</u>	<u>12</u>
<u>Speech and Language Support</u>	<u>65</u>			<u>8</u>
<u>Physical Support</u>	<u>50</u>	<u>15</u>	<u>12</u>	<u>12</u>
<u>Autistic Support</u>	<u>12</u>	<u>8</u>	<u>8</u>	<u>8</u>
<u>Multiple Disabilities Support</u>	<u>12</u>	<u>8</u>	<u>8</u>	<u>8</u>

~~(2) (B) Each A school district shall establish caseloads for special education and submit a caseload chart to the Department for approval~~ MAY REQUEST APPROVAL FOR A CASELOAD CHART WHICH VARIES FROM THAT IN PARAGRAPH (A) as part of their special education plan consistent with §14.104 (relating to educational plans). The caseload and supporting documents submitted shall:

- ~~(i)(1) Ensure the ability of assigned staff to provide the services required in each student's IEP.~~
- ~~(ii)(2) Apply to special education classes operated in the school district.~~
- ~~(iii)(3) Provide a justification for why the policy CHART deviates from the recommended caseloads CHART in §14.142 (relating to caseload for special education), if applicable. PARAGRAPH (A).~~
- (4) DESCRIBE THE OPPORTUNITIES FOR PARENTS, TEACHERS AND OTHER INTERESTED PARTIES TO REVIEW AND COMMENT ON THE CHART PRIOR TO ITS SUBMISSION.

~~(3) (C) The caseloads of the district operating the program or in which an intermediate unit operates a program in the district, shall be followed when a class operated in a district contains children from more than one district. Caseloads of an intermediate unit operated program when student educational placements are located in other than a school district building and which serve students from more than one school district, shall adhere to the referring district caseload chart with the lowest number of student enrollment for the class~~ CLASSES OR PROGRAMS WITH STUDENTS FROM MORE THAN ONE DISTRICT REGARDLESS OF WHETHER OPERATED BY A SCHOOL DISTRICT, INTERMEDIATE UNIT, OR AGENCY SHALL FOLLOW THE CASELOAD CHART OF THE DISTRICT WHERE THE CLASS OR PROGRAM IS LOCATED. INTERMEDIATE UNIT ITINERANT SERVICES PROVIDED TO MULTIPLE DISTRICTS SHALL FOLLOW THE CASELOAD CHART UNDER PARAGRAPH (A).

(4) (D) Caseloads are not applicable to approved private schools.

(5) (E) The Department may impose WITHDRAW APPROVAL OF VARIANCE IN THE CASELOAD CHART FOR caseloads on agencies A SCHOOL DISTRICT when the IF ITS caseload is determined to be inadequate. The Department will consider at least the following indicators when making the determination:

- (i) (1) Graduation rates of students with a disability.
- (ii) (2) Drop-out rates of students with a disability.
- (iii) (3) Post secondary transition of students with a disability.
- (iv) (4) Rate of grade level retentions.



~~(v)(5) Statewide and district-wide assessment results as prescribed by §§4.51 and 4.52~~

~~(relating to State assessment system; and local assessment system).~~

~~(6)(F) Each school district shall establish an age range for elementary school classes (grades K-6) and secondary school classes (grades 7-12) and submit to the Department an age range chart for approval as part of their special education plan consistent with §14.104.~~

~~School district age range shall:~~

~~(i) Ensure the ability of assigned staff to provide the services required in each student's IEP.~~

~~(ii) Apply to special education classes operated in the school district.~~

~~(iii) Provide a justification for any deviation in the age range from these recommended age ranges: No greater difference than 3 years in chronological age from the youngest to the oldest student in elementary school (grades K-6); No greater difference than 4 years in chronological age from the youngest to the oldest student in secondary school (grades 7-12).~~

THE MAXIMUM AGE RANGE SHALL BE 3 YEARS IN ELEMENTARY SCHOOL

(GRADES K-6) AND 4 YEARS IN SECONDARY SCHOOL (GRADES 7-12). A

STUDENT WITH A DISABILITY MAY NOT BE PLACED IN A CLASS IN WHICH

THE CHRONOLOGICAL AGE FROM THE YOUNGEST TO THE OLDEST STUDENT

EXCEEDS THESE LIMITS UNLESS AN EXCEPTION IS DETERMINED TO BE

APPROPRIATE BY THE IEP TEAM AND IS JUSTIFIED IN THE IEP.

**§14.143 Disciplinary placements.**

- (a) Notwithstanding the requirements incorporated by reference, in 34 CFR 300.519(b) (relating to change of placement for disciplinary removals), a series of nonconsecutive removals from school occurring on more than DISCIPLINARY EXCLUSION OF A STUDENT WITH A DISABILITY FOR MORE THAN 15 CUMULATIVE school days in a school year will be considered a pattern so as to be deemed a change in educational placement.
- (b) A removal from school is a change of placement for a student who is identified with mental retardation, except if the student's actions are consistent with 34 CFR 300.520 (a)(2)(i) and (ii) (relating to authority of school personnel). For this purpose the definitions at 34 CFR §300.520(d) apply.

#### **§14.144 Facilities**

The comparability and availability of facilities for students with a disability shall be consistent with the approved intermediate unit or school district plan, which shall provide, by description of policies and procedures, the following:

- (1) Students with disabilities will be provided appropriate classroom space.
- (2) Moving of a class shall occur only when the result will be:
- (i) To bring the location for delivery of special education services and programs closer to the students' homes.
- (ii) To improve the delivery of special education services and programs without reducing the degree to which the students with disabilities are educated with students without disabilities.

- (iii) To respond to an emergency which threatens the students' health or safety.
- (4) To accommodate ongoing building renovations, provided that the movement of students with disabilities due to renovations will be proportional to the number of students without disabilities being moved.
- (v) That the location of classes shall be maintained within a school building for at least 3 school years.

(3) Each special education class is:

- (i) Maintained as close as appropriate to the ebb and flow of usual school activities.
- (ii) Located where noise will not interfere with instruction.
- (iii) Located only in space that is designed for purposes of instruction.
- (iv) Readily accessible.
- (v) Composed of at least 28 square feet per student.

### EARLY INTERVENTION

#### §14.151 Purpose.

- (A) SECTIONS 14.151 THROUGH 14.158 APPLY TO SERVICES AND PROGRAMS FOR ELIGIBLE YOUNG CHILDREN.
- (B) Notwithstanding the requirements incorporated by reference, with regard to early intervention services:
  - (1) The Department will provide for the delivery of early intervention services.

(2) The Department may provide for the delivery of some or all of these services through mutually agreed-upon written arrangements. Each mutually agreed-upon written arrangement may include memoranda of understanding under an approved plan submitted to the Department by an intermediate unit, school district, or other agencies.

**§14.152 Child find, public awareness and screening.**

- (a) Each early intervention agency shall adopt and use a system to locate and identify eligible young children and young children thought to be eligible who reside within the boundary served by the early intervention agency.
- (b) Each early intervention agency shall conduct awareness activities to inform the public of early intervention services and programs and the manner by which to request these services and programs.
- (c) Each early intervention agency shall ~~notify the public of child identification and the procedures followed to ensure confidentiality of information pertaining to eligible young children.~~ PROVIDE ANNUAL PUBLIC NOTIFICATION, PUBLISHED OR ANNOUNCED IN NEWSPAPERS OR OTHER MEDIA, OR BOTH, WITH CIRCULATION ADEQUATE TO NOTIFY PARENTS THROUGHOUT THE AREA SERVED BY THE AGENCY OF CHILD IDENTIFICATION ACTIVITIES AND OF THE PROCEDURES FOLLOWED TO ENSURE CONFIDENTIALITY OF INFORMATION PERTAINING TO ELIGIBLE YOUNG CHILDREN IN ACCORDANCE WITH THIS CHAPTER.

**§14.153 Evaluation.**

Notwithstanding the requirements adopted by reference:

- (1) Evaluations shall be conducted by early intervention agencies for children who are thought to be eligible for early intervention and who are referred for evaluation.
- (2) Evaluations shall be sufficient in scope and depth to investigate information relevant to the young child's suspected disability, including, but not limited to, physical development, cognitive and sensory development, learning problems, learning strengths and educational needs, communication development, social and emotional development, self-help skills and health considerations, as well as an assessment of the family's perceived strengths and needs which will enhance the child's development.
- (3) The assessment shall include information to assist the MDT to determine whether the child has a disability and needs special education and related services and to determine the extent to which the child can be involved in the general curriculum or appropriate preschool activities.
- (4) The following timeline applies to the completion of evaluations and reevaluations under this section:
  - (i) Initial evaluation or reevaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60 days after the early intervention agency receives written parental consent.

(ii) Notwithstanding the requirements incorporated by reference at 34 CFR 300.536 (relating to reevaluation), a reevaluation report shall be provided within 60 days from the date that the request for reevaluation was received from the parent or teacher, or from the date that a determination is made that conditions warrant a reevaluation.

(iii) Reevaluations shall occur at least every 2 years.

(5) Each eligible young child shall be evaluated by a MDT, to make a determination of continued eligibility for early intervention services and to develop an evaluation report in accordance with the requirements concerning evaluation under §14.123 (relating to evaluation), excluding the provision to include a certified school psychologist where appropriate under §14.123(a).

**§14.154 IEP.**

(a) An IEP is a written plan for the provision of appropriate early intervention services to an eligible young child, including services to enable the family to enhance the young child's development. The IEP shall be based on and be responsive to the results of the evaluation.

(b) Notwithstanding the requirements incorporated by reference, the IEP team shall include:

- (1) At least one special education teacher or special education provider.
- (2) An agency representative familiar with ~~the general education curriculum or~~ appropriate activities for preschool children AND KNOWLEDGEABLE

ABOUT THE AVAILABILITY OF THE RESOURCES OF THE EARLY INTERVENTION AGENCY. With regard to the adoption of 34 CFR 300.344(a)(4) (relating to IEP team), the agency representative should SHALL be qualified to provide or supervise the provision of specially designed instruction to meet the needs of children with disabilities. This could include a preschool supervisor or service coordinator or designee of the early intervention agency.

- (c) With parental consent, the IEP shall include a section on family services, which shall provide for appropriate services to assist the family in supporting the eligible young child's development.
- (d) Notwithstanding the requirements incorporated by reference, the following timelines govern the preparation and implementation of IEPs:
  - (1) The IEP of each eligible young child shall be implemented as soon as possible, but no later than 14 days after the completion of the IEP.
  - (2) The IEP of each eligible young child shall be reviewed by the IEP team at least annually.
- (e) For children who are within 1 year of transition to a program for school age students, the IEP shall contain goals and objectives which address the transition process.
- (f) Progress indicators include but are not limited to, IEP annotation, dated progress and documented parental feedback.
- (g) If an eligible young child moves from one early intervention agency to another in this Commonwealth, the new early intervention agency shall implement the existing IEP to the extent possible or shall provide services and programs specified in an interim

IEP agreed to by the parents until a new IEP is developed and implemented and until the completion of due process proceedings under this chapter.

- (h) Every eligible young child receiving special education and related services provided for in the IEP developed prior to \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of the adoption of this proposed rulemaking.) shall continue to receive the special education and related services under that IEP subject to the terms, limitations and conditions set forth in law.

**§14.155 Range of services.**

- (a) The Department will ensure that options are available to meet the needs of children eligible for early intervention. The options may be made available directly by early intervention agencies or through contractual arrangements for services and programs of other agencies in the community, including preschools, provided these other agencies are appropriately licensed, WHEN APPROPRIATE, by the Department or the Department of Public Welfare.
- (b) The IEP team shall review the alternatives in subsection (c) in descending order, except for the options relating to services and programs provided in the home. Services provided in the home may be the least restrictive early intervention program for an eligible young child.
- (c) The IEP team shall recommend services and programs be provided in a regular class or regular preschool program unless the IEP team determines that the IEP cannot be



implemented in a regular class or regular preschool program even with supplemental aids and services. The placement options include the following:

- (1) Regular preschool program or class for the entire school or program day with supportive intervention, including modifications to the regular program and individualization by the preschool program or classroom teacher.
- (2) Regular preschool program or class for all or most of the school or program day, with supplemental aids and services provided by early intervention personnel.
- (3) Early intervention services and programs provided in a specialized setting for most or all of the program day, with noneligible young children.
- (4) Early intervention services and programs provided in a specialized setting, with some programming provided in the regular preschool program or class and opportunities for participation with noneligible young children in play or other activities.
- (5) Early intervention services and programs provided in the home, including services which are provided in conjunction with services provided in another setting.
- (6) Early intervention services provided in a specialized early intervention program.
- (7) Early intervention services and programs provided in a specialized setting, including the following:
  - (i) An approved private school.

(ii) A residential school, residential facility, State school or hospital or special secure setting on an individual or group basis, with parental consent.

(iii) An approved out-of-State program.

(d) The duration of early intervention services, in terms of program days and years, shall accommodate the individual needs of eligible young children. The duration of early intervention services shall be developed by each early intervention agency and shall be included in its plans under §14.104 (relating to educational plans).

(E) THE CASELOADS OF PROFESSIONAL PERSONNEL SHALL BE DETERMINED ON THE BASIS OF MAXIMUMS ALLOWED AND THE AMOUNT OF TIME REQUIRED TO FULFILL ELIGIBLE YOUNG CHILDREN'S IEPS. THE FOLLOWING CASELOADS SHALL BE USED IN EARLY INTERVENTION PROGRAMS:

(I) SUPPORTIVE INTERVENTION. IN A REGULAR PRESCHOOL PROGRAM IN WHICH SUPPORTIVE INTERVENTION IS THE PRIMARY METHOD OF SERVICE, THE CASELOAD RANGE SHALL BE 10-40 CHILDREN WITH NO MORE THAN 6 ELIGIBLE YOUNG CHILDREN SERVICED IN THE SAME SESSION. SUPPORTIVE INTERVENTION INCLUDES CONSULTATION, INTEGRATED THERAPIES AND OTHER INSTRUCTIONAL STRATEGIES.

(II) SPECIALIZED SETTING. IN EARLY INTERVENTION PROGRAMS PROVIDED IN A SPECIALIZED SETTING, THE STAFF RATIO IS BASED ON THE DEVELOPMENTAL LEVELS OF THE CHILDREN. AT

LEAST ONE STAFF MEMBER SHALL BE A CERTIFIED PROFESSIONAL. FOR CHILDREN FUNCTIONING AT:

(A) 0-18 MONTHS – 1 STAFF MEMBER FOR EVERY 3 ELIGIBLE YOUNG CHILDREN, WITH A MAXIMUM CLASS SIZE OF 9.

(B) 18 –36 MONTHS – 1 STAFF MEMBER FOR EVERY 4 ELIGIBLE YOUNG CHILDREN, WITH A MAXIMUM CLASS SIZE OF 12.

(C) 36 MONTHS AND UP –1 STAFF MEMBER FOR EVERY 6 ELIGIBLE YOUNG CHILDREN, WITH A MAXIMUM CLASS SIZE OF 18 CHILDREN.

(III) HOME BASED PROGRAM. IN EARLY INTERVENTION

PROGRAMS IN WHICH THE HOME BASED PROGRAM IS PROVIDED TO ELIGIBLE YOUNG CHILDREN AS THE ONLY PROGRAM, THE RATIO IS 10 TO 20 ELIGIBLE YOUNG CHILDREN PER TEACHER. THIS SHALL ALSO INCLUDE TEACHERS OF THE VISUALLY IMPAIRED, HEARING IMPAIRED, AND ORIENTATION AND MOBILITY SPECIALISTS.

(IV) EARLY INTERVENTION PROGRAM – SPEECH AND LANGUAGE.

IN EARLY INTERVENTION PROGRAMS, THE SPEECH AND LANGUAGE ITINERANT PROGRAM WILL BE PROVIDED WITHIN A CASELOAD OF 10 TO 50 ELIGIBLE YOUNG CHILDREN ENROLLED PER TEACHER.

(V) EARLY INTERVENTION PROGRAM – PHYSICAL AND

OCCUPATIONAL THERAPIES. IN EARLY INTERVENTION

PROGRAMS WHERE PHYSICAL THERAPY OR OCCUPATIONAL THERAPY, OR BOTH IS SPECIFIED ON THE IEP, INDIVIDUAL CASELOADS ARE DETERMINED WITH CONSIDERATION OF THE TYPE OF SERVICES DELIVERED AND THE TIME REQUIRED FOR THOSE SERVICES.

**§14.156 System of quality assurance.**

The Department will assure in accordance with section 875-302(b) of the Act (11 P.S. §875-302(b)) through its monitoring and technical assistance activities, a system of quality assurance, including evaluation of the developmental appropriateness, quality and effectiveness of programs; assurance of compliance with program standards; DOCUMENTED PROGRESS INDICATORS; and provision of assistance to assure compliance. These requirements will apply to those programs operated by the early intervention agency directly or those THROUGH providers contracted by the early intervention program-AGENCY.- Monitoring will include onsite review of:

- ~~(1) Developmental appropriateness. The programs and settings for eligible young children shall include the following developmentally and age appropriate practices, and shall:
  - ~~(i) Include a curriculum based on established scope and sequence of instruction.~~
  - ~~(ii) Maximize the amount of time a child is engaged in learning experiences.~~
  - ~~(iii) Maximize parent involvement, including activities which parents can do with the child.~~~~

- ~~(iv) Facilitate social interaction with normally developing children.~~
- ~~(v) Provide experiences to stimulate learning in all domains: physical, cognitive, communicative, social-emotional and self-help.~~
- ~~(vi) Be in an environment in which children can learn through active exploration and interaction with concrete materials, with adults and with other children.~~
- ~~(vii) Be in an environment organized so that children may select many of their own activities among a variety of learning areas including: dramatic play, blocks, science, math, games and puzzles, books, recordings, art and music.~~
- ~~(viii) Provide daily opportunities for children to use small and large muscles, to listen to stories, to see how spoken and written language are related and to express themselves creatively.~~
- ~~(ix) Be in an environment organized so that children may work individually or in small groups for part of the day.~~
- ~~(x) Provide activities and adult interactions that are responsive to individual differences in ability, interests, cultural backgrounds and linguistic styles.~~
- ~~(xi) Develop self-control by using positive guidance techniques, such as modeling, encouraging expected behavior, setting clear limits and redirecting the child to more acceptable activity.~~
- ~~(xii) Provide opportunities for children to develop social skills, such as cooperating, helping, sharing, negotiating, and talking with others to solve interpersonal problems.~~

~~(2) Caseload. The caseloads of professional personnel shall be determined on the basis of maximums allowed and the amount of time required to fulfill the specific IEPs. The following caseloads shall be used in early intervention programs:~~

~~(i) Supportive intervention. In a regular preschool program in which supportive intervention is the primary method of service, the caseload range should SHALL be 10-40 children with no more than 6 eligible young children serviced in the same session.~~

~~(ii) Specialized setting. In early intervention programs provided in a specialized setting, the staff ratio is based on the developmental levels of the children. At least one staff member shall be a certified professional. For children functioning at:~~

~~(A) 0-18 months — 1 staff member for every 3 eligible young children, with a maximum class size of nine.~~

~~(B) 18-36 months — 1 staff member for every 4 eligible young children, with a maximum class size of 12.~~

~~(C) 36 months and up — one staff member for every 6 eligible young children, with a maximum class size of 18 children.~~

~~(iii) Home based program. In early intervention programs in which the home based program is provided to eligible young children as the only program, the ratio is 10 to 20 young children per teacher. This shall also include teachers of the visually impaired, hearing impaired, and orientation and mobility specialists.~~

~~(iv) Early intervention program — speech and language. In early intervention programs, the speech and language itinerant program will be provided within a caseload of 10 to 50 eligible young children enrolled per teacher.~~

~~(v) Early intervention program — physical and occupational therapies. In early intervention programs where physical therapy or occupational therapy, or both is specified on the IEP, individual caseloads are determined with consideration of the type of services delivered and the time required for those services.~~

~~(3) Documented progress indicators. Progress indicators may include IEP annotation, dated progress reports and documented parental feedback.~~

**§14.157 Exit criteria.**

(a) Under section 875-301(1)(14) of the act (11 P.S. §875-301(1)(14)) children shall be exited SUBJECT TO THE PROVISIONS OF §14.161 (RELATING TO PROCEDURAL SAFEGUARDS) from early intervention based on one or more of the following criteria:

- (1) The child has reached the age of beginners and is therefore no longer eligible for early intervention services authorized under the act.
- (2) The child has functioned within the range of normal development for a period of 4 months, with an IEP, and as verified by the IEP team.
- (3) The parent or guardian withdrew the child from early intervention for other reasons.

(b) If the child does not meet exit criteria and the child's IEP demonstrates that the child will benefit from services which can be provided only through special education, nothing in the law or this chapter shall prevent that placement.

**§14.158 Data collection and confidentiality.**

The Department will require early intervention agencies to maintain accurate information concerning eligible young children and the types of services received, and to report that information in aggregate at pre-determined dates throughout the fiscal year. The Secretary will prescribe the format, content, data items and time for submission of the required information.

**PROCEDURAL SAFEGUARDS**

**§14.161 Prehearing conferences.**

The purpose of the prehearing conference is to reach an amicable agreement in the best interest of the student or young child.

(1) In addition to the requirements incorporated by reference in 34 CFR 300.503 - 300.505 (relating to prior notice by the public agency; content of notice; procedural safeguards notice; and parental consent), the notice shall provide for a parent to request the school district OR EARLY INTERVENTION AGENCY IN THE CASE OF A YOUNG



CHILD to convene a prehearing conference in instances when the parent disapproves the school district's proposed action or refusal to act.

- (2) When A PARENT requested REQUESTS AND the school district OR EARLY INTEVENTION AGENCY IN THE CASE OF A YOUNG CHILD AGREES TO PARTICIPATE IN A shall convene the prehearing conference, THE CONFERENCE SHALL BE CONVENED within 10 days of receipt of the parent notice and shall be chaired by the superintendent, THE EARLY INTERVENTION AGENCY REPRESENTATIVE, or the superintendent's THEIR designeeS.
- (3) THE A PARENTS OR THE SCHOOL DISTRICT OR EARLY INTERVENTION AGENCY IN THE CASE OF A YOUNG CHILD MAY WAIVE THE RIGHT TO A PREHEARING CONFERENCE AND IMMEDIATELY REQUEST AN IMPARTIAL DUE PROCESS HEARING UNDER §14.162 (RELATING TO IMPARTIAL DUE PROCESS HEARING AND EXPEDITED DUE PROCESS HEARING).
- ~~(3)~~(4) If the prehearing conference results in agreement, the provisions under §14.131 (relating to IEP) shall be applied.
- (5) Within 5-calendar days of the agreement, a parent may notify the school district OR EARLY INTERVENTION AGENCY IN THE CASE OF A YOUNG CHILD in writing of a decision not to approve the IDENTIFICATION, EVALUATION, recommended assignment, OR THE PROVISION OF A FREE APPROPRIATE PUBLIC EDUCATION. When a parent gives notice not to approve the IDENTIFICATION, EVALUATION, recommended assignment, OR THE PROVISION OF A FREE APPROPRIATE PUBLIC EDUCATION, or if the prehearing conference does not result in an agreement, the provisions under §14.162

(relating to impartial due process hearing and expedited due process hearing) shall be applied.

~~(4) The parents or the school district may waive the right to a prehearing conference and immediately request an impartial due process hearing under §14.162.~~

**§14.162 Impartial due process hearing and expedited due process hearing.**

(a) In addition to the requirements incorporated by reference at 34 CFR 300.504 (relating to procedural safeguard notice), with regard to a student who is mentally retarded or thought to be mentally retarded, notice when mailed shall be issued to the parent by certified mail (addressee only, return receipt requested).

(b) Parents may request an impartial due process hearing concerning the identification, evaluation, or educational placement of, or the provision of a free appropriate public education to a student who is a child with a disability or who is thought to be a child with a disability or a young child who is eligible or who is thought to be eligible, if IF the A parents disagreeS with the school district's, or the early intervention agency's in the case of a young child, identification, evaluation, or placement of, or the provision of a free appropriate public education to the student or young child, THE PARENT MAY REQUEST AN IMPARTIAL DUE PROCESS HEARING.

(c) A school district, or the early intervention agency in the case of a young child, may request a hearing to proceed with an initial evaluation, or an initial educational placement OR A REEVALAUTION when the district or the early intervention agency in the case of a young child, has not been able to obtain OBTAINED PARENTAL consent from the

~~parents or in regard to a matter under subsection (b)~~AS REQUIRED BY 34 CFR §300.505(C)(RELATING TO PARENTAL CONSENT). WHEN A PARENT REJECTS THE DISTRICT'S PROPOSED IDENTIFICATION OF A CHILD, PROPOSED EVALUATION, PROPOSED PROVISION OF A FREE APPROPRIATE PUBLIC EDUCATION OR PROPOSED EDUCATIONAL PLACEMENT, THE SCHOOL DISTRICT MAY REQUEST AN IMPARTIAL DUE PROCESS HEARING.

(d) The hearing for a child with a disability or thought to be a child with a disability shall be conducted by and held in the school district at a place AND TIME reasonably convenient to the parents AND CHILD INVOLVED. A hearing for an eligible young child or thought to be eligible young child shall be conducted by the early intervention agency at a place AND TIME reasonably convenient to the parents AND CHILD INVOLVED. These options shall be set forth in the notice provided for requesting a hearing.

(e) The hearing shall be an oral, personal hearing and shall be ~~open~~ CLOSED to the public unless the parents request a ~~closed~~ AN OPEN hearing. If the hearing is open, the decision issued in the case, and only the decision, shall be available to the public. If the hearing is closed, the decision shall be treated as a record of the student or young child and may not be available to the public.

(f) The decision of the hearing officer shall include findings of fact, a discussion and conclusions of law. Although technical rules of evidence will not be followed, the decision shall be based solely upon the substantial evidence presented at the hearing.

(g) The hearing officer shall have the authority to order that additional evidence be presented.

(h) ~~Notwithstanding the requirements incorporated by reference at 34 CFR 300.509(a)(4), (relating to hearing rights), a~~ A written OR AT THE OPTION OF THE PARENTS,

ELECTRONIC VERBATIM RECORD transcript of the hearing shall, upon request, be made and provided to parents at no cost.

(i) Parents may be represented by legal counsel and accompanied and advised by individuals with special knowledge or training with respect to the problems of children with disabilities.

(j) A parent or parent's representative shall be given access to educational records, including any tests or reports upon which the proposed action is based.

(k) A party may prohibit the introduction of evidence at the hearing that has not been disclosed to that party at least 5-business days before the hearing.

(l) A party has the right to compel the attendance of and question witnesses who may have evidence upon which the proposed action might be based.

(m) A party has the right to present evidence and testimony, including expert medical, psychological or educational testimony.

(n) Any party to a hearing has the right to obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(o) The decision of the hearing officer regarding a child with a disability or thought to be a child with a disability may be appealed to a panel of three appellate hearing officers. The panel's decision may be appealed further to a court of competent jurisdiction. In notifying the parties of its decision, the panel shall indicate the courts to which an appeal may be taken. The decision of the hearing officer regarding an eligible young child may be appealed to a court of competent jurisdiction. In notifying the parties of the decision, the hearing officer shall indicate the courts to which an appeal may be taken.

(p) The following applies to coordination services for hearings and to hearing officers and appellate hearing officers:

- (1) The Secretary may contract for coordination services in support of hearings conducted by local school districts. The coordination services shall be provided on behalf of school districts and may include arrangements for stenographic services, arrangements for hearing officer services, scheduling of hearings and other functions in support of procedural consistency and the rights of the parties to hearings.
- (2) If a school district chooses not to utilize the coordination services under paragraph (1), it may conduct hearings independent of the services if it has obtained the Secretary's approval of procedures that similarly provide for procedural consistency and ensure the rights of the parties. In the absence of approval, a school district which receives a request for an impartial due process hearing shall forward the request to the entity providing coordination services under paragraph (1) without delay.
- (3) The Secretary will contract for the services of hearing officers for hearings related to an eligible young child or thought to be eligible young child and for appellate hearing officers for school aged students and may compensate the hearing officers and appellate hearing officers for their services. The compensation does not cause the hearing officers and appellate hearing officers to become employees of the Department.
- (4) Neither a hearing officer nor an appellate hearing officer may be an employe or agent of a school entity in which the parents or student or young child resides, or of an agency which is responsible for the education or care of the student or young child

OR BY ANY PERSON HAVING A PERSONAL OR PROFESSIONAL INTEREST THAT WOULD CONFLICT WITH HIS OR HER OBJECTIVITY IN THE HEARING. A hearing officer or appellate hearing officer shall promptly inform the parties of a personal or professional relationship the officer has or has had with any of the parties.

(q) The following timeline applies to due process hearings:

- (1) A hearing shall be held within 30 ~~calendar~~ days after a parent's or school district's initial request for a hearing. IF THE SCHOOL DISTRICT USES THE COORDINATION SERVICES UNDER (P), THEN THE PARENT'S REQUEST MUST BE FORWARDED BY THE SCHOOL DISTRICT WITHIN 5 DAYS OF THE RECEIPT OF THE REQUEST TO THE SERVICE AGENCY SUPPORTED BY THE SECRETARY.
- (2) The hearing officer's decision shall be issued within 45 ~~calendar~~ days after the parent's or school district's request for a hearing.
- (3) The appellate hearing panel shall render a decision within 30 ~~calendar~~ days after a request for review ~~and shall provide the parties a written copy of the panel's decision.~~
- (4) A hearing officer or appellate hearing officer may grant specific extensions of time beyond the periods in paragraphs (1) – (3) at the request of either party.
- (5) If an expedited hearing is conducted under 34 CFR 300.528 (relating to expedited due process hearings), the hearing officer decision shall be mailed within 45 days of the public agency's receipt of the request for the hearing without exceptions or extensions.

(r) IF THE DECISION OF THE HEARING OFFICER IS APPEALED, THE PANEL OF APPELLATE HEARING OFFICERS AS PROVIDED IN SUBSECTION (O), SHALL CONDUCT AN IMPARTIAL REVIEW OF THE HEARING. THE REVIEW SHALL:

- (1) EXAMINE THE ENTIRE HEARING RECORD;
- (2) ENSURE THAT THE PROCEDURES AT THE HEARING WERE CONSISTENT WITH THE REQUIREMENTS OF DUE PROCESS;
- (3) SEEK ADDITIONAL EVIDENCE IF NECESSARY. IF A HEARING IS HELD TO RECEIVE ADDITIONAL EVIDENCE, THE RIGHTS UNDER §14.162(E)-(N) APPLY.
- (4) AFFORD THE PARTIES AN OPPORTUNITY FOR ORAL OR WRITTEN ARGUMENT OR BOTH AT THE DISCRETION OF THE PANEL OF APPELLATE HEARING OFFICERS;
- (5) MAKE AN INDEPENDENT DECISION ON COMPLETION OF THE REVIEW; AND
- (6) GIVE TO THE DISTRICT A WRITTEN COPY OF THE FINDINGS OF FACT AND DECISIONS AND PROVIDE AT THE OPTION OF THE PARENTS, A WRITTEN OR ELECTRONIC COPY OF THE FINDINGS OF FACT AND DECISIONS.

(±)(S) Each school district and early intervention agency shall keep a list of the persons who serve as hearing officers. The list shall include the qualifications of each hearing officer. School districts and early intervention agencies shall provide parents with information as to the availability of the list and shall make copies of it available upon request.

**EDITOR'S NOTE: Chapter 342 as it currently appears in Title 22 of the Pennsylvania**

**Bulletin is proposed to be deleted.**



**INDEPENDENT REGULATORY REVIEW COMMISSION  
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held March 8, 2001

John R. McGinley, Jr., Chairman  
Alvin C. Bush, Vice Chairman – by Phone  
Arthur Coccodrilli  
Robert J. Harbison, III  
John F. Mizner, dissenting

Regulation No. 6-270  
State Board of Education  
Special Education Services and Programs

On August 23, 2000, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the State Board of Education (Board). This rulemaking amends Chapter 14 and deletes Chapter 342 of 22 Pa. Code. The proposed regulation was published in the September 2, 2000 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on February 5, 2001.

The regulation establishes procedures to identify students in need of special education services and describes requirements and procedures for delivery of such services. The regulation also incorporates federal regulations at 34 CFR Part 300 by reference. Promulgation of this rulemaking is necessary for the Commonwealth to continue receiving funds under the Federal Individuals with Disabilities Education Act.

The Board failed to respond to a number of the Commission's Comments and provided an inadequate response to others. The comment response requirement in the Regulatory Review Act (71 P.S. § 745.2) was designed to enable the Commission to meet its mandate to determine whether a regulation is in the public interest. To determine what economic impact a regulation will have, whether there will be a negative effect on the public, and whether the requirements imposed by a regulation are clear, feasible and reasonable, this Commission needs to be able to gauge the reaction to the Board's response to the issues raised. Although the Board did provide a more detailed response and rationale subsequent to this Commission's inquiries, responses outside the regulatory review process do not provide the necessary public exposure to generate reaction, nor is it within the timelines outlined in that process.

An agency's final-form regulation should be accompanied by a response to comments of the Commission, and those of other commentators, that fully explains changes to the final-form regulation as well as its rationale for not making recommended changes. Further, questions asked in the Commission's Comments should be answered, to help us further understand your proposal.

Several issues, which we raised in our Comments, remain concerns. With respect to these issues, the Commission could have benefited from the public's reaction to the Board's subsequent responses. First, the statutory and regulatory definitions of "early intervention services" and "mutually agreed upon written arrangement" should be consistent. The definitions

of these terms in Section 14.101 are not identical to the corresponding statutory definitions. Clarity would be improved by either referencing or exactly repeating the statutory definitions.

Second, the final-form regulation should address the role of foster parents in obtaining special education or early intervention services. The federal regulations at 34 CFR Section 300.20 define the term "parent" in two subsections. Subsection (a) generally defines "parent" and Subsection (b) defines the term relating to "foster parent." The federal definition provides "unless State law prohibits a foster parent from acting as a parent, a State may allow a foster parent to act as a parent." Therefore, the responsibility remains with the Board to clarify the role of foster parents.

Finally, the definitions of "itinerant," "part-time" and "resource" should be clarified. These definitions are confusing. In our Comments on the proposed rulemaking, we asked the Board to clarify these definitions. The Board responded that these terms are well understood by practitioners in the field. However, these regulations will be used by a wider range of individuals than practitioners in the field.

Additionally, we have several remaining concerns relating to the reasonableness of the caseload requirements and the deletion of class size requirements (71 P.S. § 745.5a(i)(3)(iv)); clarity of the incorporation by reference of federal regulations (71 P.S. § 745.5a(i)(3)(ii)); and the reasonableness of the two-year reevaluation period for children in early intervention programs (71 P.S. § 745.5a(i)(3)(iv)).

First, we question the reasonableness of eliminating the class size restrictions. Section 14.142(a) of the final-form regulation contains a chart of the maximum caseload allowed on a single teacher's roll for each school district. In our Comments on the proposed rulemaking, we noted that the existing caseload chart (22 Pa. Code § 342.42) established "the maximum number of exceptional students in the room with the teacher at any one time." The revised caseload chart does not contain such a limit.

In the Preamble, the Board explains that it chose to eliminate class size restrictions because: (1) there is no federal requirement for establishing class sizes; (2) staffing of classes for students with disabilities cannot be determined effectively as a uniform statewide standard; (3) caseload requirements provide general protections; and (4) procedural safeguards prevent class size from impeding students from achieving their goals established in their Individualized Education Programs (IEPs).

We are not persuaded by the Board's rationale. Although federal requirements do not mandate class size restrictions, they do not preclude the Board from establishing such limits. As previously noted, the existing caseload chart imposed limits on the maximum number of exceptional students in a classroom. The Preamble does not indicate that the limits in the existing caseload chart were unreasonable. Restoring these limits would ensure that exceptional students receive the staff attention necessary to achieve the goals of their IEPs. Furthermore, the basis for the maximum caseloads contained in the chart is unexplained. The Board should specify how the caseload range was determined.

Second, we question the reasonableness of requiring parents and other interested parties to piece together the appropriate federal regulations from an extensive list along with the pertinent Chapter 14 requirements. We continue to believe that inserting the references to the federal regulations in the corresponding sections would improve the clarity of the final-form regulation.

The final-form regulation includes an extensive list of federal regulations which are incorporated by reference. This approach is confusing. In our Comments, we noted that clarity would be improved if each reference to federal regulations were inserted in the corresponding section of the Board's regulation.

The Board declined to make this change, stating that the Department of Education has and will continue to develop publications to help parents, teachers and administrators understand their rights under both state and federal statutes and regulations.

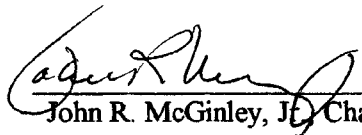
Third, we question the reasonableness of requiring reevaluations only every two years. Section 14.153(4)(iii) of the final-form regulation requires reevaluations to occur at least every two years for children in early intervention programs. The existing regulations require reevaluations every year. The Board has not adequately explained why it expanded the time frame for reevaluations to every two years.

We have determined this regulation is consistent with the statutory authority of the State Board of Education (24 P.S. §§ 1-101 - 26-2606-B) and the intention of the General Assembly. However, after considering the other criteria of the Regulatory Review Act discussed above, we find promulgation of this regulation is not in the public interest.

**BY ORDER OF THE COMMISSION:**

This regulation is disapproved.



  
John R. McGinley, Jr., Chairman

**State Board of Education Regulation #6-270 (#2144)**  
**Special Education Services and Programs**  
**Response to IRRC Questions**

- In the Annex, Section 14.141 does not show Paragraphs (2) – (6). An amended version of the paragraphs appears as new Subsections (b) – (f) in Section 14.142. This change is not explained in the Comment and Response document, nor correctly marked in the Annex. The Board should have shown the deleted language with strikeouts in Section 14.141 of the Annex.

**The format was chosen for the ease of the reader. By moving the caseload chart to the beginning of language on educational placement and showing clearly the modification made in the process by which a school district could submit an alternate caseload for approval the reader would understand changes more clearly than through strikeouts and new language.**

*The following issues were included in IRRC's Comments on the proposed rulemaking, but were not addressed in the comment and response document or reflected in the Annex.*

1. Will a student who satisfactorily completes a special education program developed by an IEP team be issued a diploma? How will parents and school districts know what criteria is necessary for a child with a disability to graduate? (IRRC comments, Issue 1)

**Yes. This is addressed in Chapter 4. Section 4.24 (f) specifies how students with IEP's will be granted regular high school diplomas. Specifics of that should be handled as part of normal transition planning in the IEP (in which parents are actively involved). Pursuant to the requirement of §300.347(b), during the normal course of transition planning for the IEP, parents and school district entities will discuss the criteria necessary for a child with a disability to graduate.**

2. Where the regulation does not specify school or calendar days, what is the Board's intent? (IRRC comments, Issue 1)

**By adopting CFR 300.9, "day" means calendar day unless otherwise indicated as "school day" or "business day."**

3. How will parents and school districts measure whether students have "subaverage general intellectual functioning"? How will reliance on the federal definition of "mental retardation" affect students currently in special education? (IRRC comments, Issue 2)

**They will measure it in the evaluation process by following the procedures found in CFR 300.530—300.535. These procedures rely on the professional judgments of the evaluation team to select and administer instruments that gather relevant functional and developmental information about the child. By design, the U.S. Department of Education was reluctant to define specific instruments and levels of functioning because of potential discrimination based on racial or cultural bases.**

**Section 14.131(a)(5) states that every student with an IEP prior to the adoption of these regulations will continue to receive services. This phrase has been used each time these regulations have been amended to ensure that students in the system can continue to receive services.**

4. Why didn't the Board reference or exactly repeat the statutory definitions of "early intervention services" and "mutually agreed-upon written arrangement"? (IRRC comments, Issue 3)

**See Report on Final-form Regulations regarding the change made in response to this comment.**

5. What is the role of foster parents in obtaining special education or early intervention services? (IRRC comments, Issue 3 relating to definition of "Parent")

**See Report on Final-form Regulations regarding the change made in response to this comment.**

6. In Section 14.102(a), what qualifies as "quality" special education services and programs? (IRRC comments, Issue 4)

**The Board elected to retain the phrase since parents desired the term to inspire schools to provide more than the minimum in services and programs. Quality in this case would refer to the ability to deliver the programs and services designed to meet the requirements of the IEP.**

7. In Section 14.102(a)(2), the incorporation by reference would be clearer if it were moved to the corresponding sections of the regulation under the applicable subject areas. (IRRC Comments, Issue 4).

**We reviewed this concern but found that several of the federal sections would be cited in a number of places leading to greater confusion than by listing all sections in the beginning. Specific cites will correspond in the Department's "side-by-side" (listing both state and federal regulations ) to be produced when Chapter 14 is complete.**

8. Why is the phrase "except as expressly otherwise provided in this chapter..." necessary in Section 14.102(a)(2)? (IRRC comments, Issue 4)

**That phrase is used to ensure that where these regulations exceed federal regulations they prevail.**

9. Why wasn't "evaluated" added to Section 14.121(a)? (IRRC comments, Issue 6)

**Because the federal regulations adopted by reference differentiate child find from screening and evaluation functions. Parental identification of a child as a result of child find activities does not mean that the child will require formal evaluation. Sections 14.121, 14.122, 14.123 appropriately distinguish the requirements of each of these functions.**

10. Why weren't examples of "awareness activities" added to Section 14.121(b)? (IRRC comments, Issue 6)

**Examples of these awareness activities are typically addressed in Department guidance to schools.**

11. In Section 14.121(c), what constitutes “adequate” circulation? (IRRC comments, Issue 6)

**This section reflects the federal requirement. With 501 school districts, what constitutes “adequate” varies by demography, geography and the availability of newspapers and other media. A single standard would not be helpful.**

12. Why is a 60 school day time frame necessary in Section 14.122(d)? (IRRC comments, Issue 7)

**Ten years of experience demonstrate that 60 school days is necessary to measure improvement (or lack of improvement) through instructional interventions. Parents retain the right to request an evaluation at any time in this process.**

13. In Section 14.123, why weren't the provisions of 22 Pa. Code Sections 342.25(f) – (m) included in Section 14.123? (IRRC comments, Issue 8)

**These provisions are prescribed in the federal regulations adopted by reference (34 CFR §§300.532--300.535) (relating to evaluation procedures; determination of needed evaluation data; and procedures for determining eligibility and placement).**

14. In Section 14.123(b), will parents be allowed to review and discuss drafts of the report with the school administration? If so, the regulation should clarify that parents have this right. (IRRC comments, Issue 8)

**The Board eliminated provisions for drafts and their reviews to be consistent with federal regulations. Parents are provided the opportunity to discuss the evaluation report, including all education records and evaluation documents, prior to any further steps in the process.**

15. Why does a school district need 60 school days from the time it receives written parental consent to complete the evaluation and draft the report? The same concern applies to the time frame for reevaluation in Section 14.124(b). What process occurs during the 60-school day time period? (IRRC comments, Issue 8)

**The evaluation may include the performance of testing and assessment by a variety of professionals (e.g., speech therapists, ophthalmologists, medical doctors and school psychologists) which can take several weeks for arrangements to be made convenient to the parent and professional. Subsequent report writing can also take some weeks.**

16. In section 14.131, the Board should consider retaining “behavior management programs” as a component of the IEP or explain why this requirement is not retained. (IRRC comments, Issue 9)

**Federal regulations adopted by reference require the development of behavior support programs in the IEP development process for students with disabilities where their behavior is a manifestation of the disability.**

17. In section 14.131(a)(1), what is the procedure for a parent to waive the 10-day rule that requires a copy of the comprehensive evaluation to be disseminated to parents? Why isn't this procedure contained in the final regulation? (IRRC comments, Issue 9)

**The district is required to schedule an IEP meeting. At the time contact is made to schedule the meeting, the parent may make a simple request to schedule the IEP meeting in less than 10 days; thus no defined procedures are necessary.**

18. Under Section 14.131(a)(3), why would a Commonwealth school district place a transferring student with a disability into a regular education program without an evaluation? (IRRC comments, Issue 9)

**Under the federal law, a child who transfers from out-of-state is treated as an initial admission to public school and must be placed in the public school and may not be placed in a special education placement without being evaluated in the new school. Under the law a child moving into the state is viewed as a new admission not a transfer (as the child would be considered moving from one Pennsylvania school district to another). Thus the student starts in regular education placement.**

19. Section 14.133(e)(7) should include examples of or a definition of "treatment of a demeaning nature." (IRRC comments, Issue 11)

**Examples of such behaviors are typically part of Department guidance to schools.**

20. Under Section 14.133 "behavior management" should be replaced with "behavioral management" consistent with IDEA 97. (IRRC comments, Issue 11) *Additionally, the final-form regulation revises the term "behavior management" to "behavior support" in Subsection (b), but continues to use the term "behavior management" in Subsection (f).*

**The Board selected the phrase, "behavior support" to reflect current thinking and practice in the Commonwealth. In subsection (f) behavior support is preferable; however, there should be no confusion in the implementation of this section.**

21. In Section 14.141, the definitions of "itinerant," "part time" and "resource" are confusing and should be clarified in the final-form regulation. (IRRC comments, Issue 12)

**These definitions were modified from current Chapter 14 to improve clarity in the development of the proposed rulemaking. They are well understood by practitioners in the field. See also, Report on Final-form Regulations regarding the change made in response to this comment.**

22. In Section 14.144(1), does this provision apply to the actual size and location of the classroom, or the facilities within the classroom? The Board should clarify the meaning of "appropriate classroom space" in the final-form regulation. (IRRC comments, Issue 14)

**This language is a reflection of the decision in *Hendricks v. Gilhool* designed to ensure that students with disabilities are provided space that is adequate and appropriate for instructional purposes (as further described in Section 14.144(3)).**

23. Does Section 14.144(2) apply only to moves within a district, or are moves between districts allowed? (IRRC comments, Issue 14)

**Yes, it applies to both cases.**

24. For consistency with federal regulations, Section 14.152(a) should be amended to reflect that early intervention agencies "identify, locate and evaluate eligible young children." (IRRC comments, Issue 15)

**Federal regulations adopted by reference differentiate child find from screening and evaluation functions. Parental identification of a child as a result of child find activities does not mean that the child will require formal evaluation. Sections 14.152 and 14.153 accurately reflect the requirements for each of these functions.**

25. In Section 14.153(4)(i) and (ii), what process occurs during the 60-day time frame, and how was this time frame determined? Also, the time period should refer to school days consistent with Sections 14.123 and 14.124. (IRRC comments, Issue 16)

**The evaluation may include the performance of testing and assessment by a variety of professionals (e.g., speech therapists, ophthalmologists, medical doctors and school psychologists) which can take several weeks for arrangements to be made convenient to parent and professional. Subsequent report writing can also take some weeks.**

**The 60 day limit (rather than 60 school day limit) is established because (1) these programs do not operate on typical school day/school year calendars, and (2) the determination of disability is somewhat more urgent given the young age of the children.**

26. In Section 14.153(iii), why was the minimum time frame for reevaluations revised? (IRRC comments, Issue 16)

**In discussions with practitioners in the field, it was determined that the preschool child's progress was constantly being assessed while in the program and adjustments made in programs and services to address the disability. Annual reevaluations provided little useful information for most children and took time away from programs. As a safeguard, parents retain the right to call for a reevaluation at any time. See Report on Final-form Regulations regarding the change made in response to this comment.**

27. In Section 14.154(d)(1), what is the basis for the 14-day limit for implementation? (IRRC comments, Issue 17)

**Because it corresponds to a 10 school day implementation in 14.131.**

28. In Section 14.155(e)(i), how was the caseload range determined? (IRRC comments, Issue 19)

**These caseloads parallel the requirements as found in Chapter 342.55. Modifications were made based on discussions with practitioners in the field and the Department who have been working with these programs over the past ten years.**

29. In Section 14.155(e)(ii), how were the staff-to-children ratios in Paragraphs (A), (B) and (C) determined?

**See response to #27**

30. In Section 14.155(e)(iii), how was the caseload ratio determined? (IRRC comments, Issue 19)

**See response to #27**

31. In Section 14.155(e)(iv), how was the caseload ratio determined? (IRRC comments, Issue 19)

**See response to #27**

32. In Section 14.155 (e)(v), does the individual therapist determine the caseload? (IRRC comments, Issue 19)

**Yes.**



33. In Section 14.157(a)(2) why was the time period reduced from six months (in the existing regulations) to four months? (IRRC comments, Issue 20)

**This was done so as to not retain the child unnecessarily when performing normally. Four months would be sufficient to determine regression.**

34. In Section 14.161, the term “young child” should be replaced with “eligible young child.” (IRRC comments, Issue 22)

**The term young child is proper because at the time of prehearing conference the eligibility of the child may be in question.**

35. In Section 14.161(2), what constitutes “receipt” of a parent notice? (IRRC comments, Issue 22)

**A copy of the written consent is filed with the school district administrative office which may be delivered by hand or sent by mail.**

*The following issues and questions relate to new language in the final-form regulation.*

1. Why didn't the Board use the defined term “child with a disability” rather than define “student with a disability?” (IRRC comments, Issue 3)

**These phrases are chosen to differentiate preschool children (covered by both IDEA and the Commonwealth's Act 212) from school age children (covered by IDEA).**

2. The language in the new Section 14.122(c)(7) is vague. What activities are required?

**There could be a wide variety of such activities. Further guidance will be offered by the Department**

3. The new language in Sections 14.123 and 14.124 contains an incorrect phrase. “[o]ther health impaired” should read “other health impairments.”

**“Other health impairments” is preferred but the format “other health impaired” will not be confusing to the field.**

4. Section 14.131(a)(2) uses the term “student,” not the defined term “student with a disability.”

**“Student with a disability” is the preferred term, since the phrase “student with an IEP” can only mean a student with a disability, there should be no confusion.**

5. In Section 14.141, the revised definition of “emotional support” is unclear.

**Current practice has found that emotional support is a necessary program for students whose primary disability identification is not emotional disturbance, thus a more general definition is given. This is the phrase suggested by the field.**

6. The changes in new Section 14.142(e) contain a typographical error. The incorrect language reads “withdraw approval of variance in the caseload chart for on a school district....”

**The typographical error is unfortunate but will be corrected by the Legislative Reference Bureau as part of their normal responsibilities.**

7. Section 14.152 uses the phrase "circulation adequate." This phrase is unclear, and should be clarified.

**This section reflects the federal requirement. With 501 school districts, what constitutes "adequate" varies by demography, geography and the availability of newspapers and other media. A single standard would not be helpful.**

8. Section 14.154(b)(2) uses the term "children with disabilities." This is not consistent with the newly defined term of "student with a disability." (IRRC comments, Issue 3)

**The phrase "children with disabilities" is used here to be consistent with federal regulations. The person needs to be qualified to provide or supervise services to both preschool and school age children.**

9. In Section 14.156, what are "documented progress indicators?"

**These are identified and described in federal regulations. Indicators of progress will be those unique to each child's goals and objectives and measured based on the child's predicted ability to benefit.**

10. In Section 14.162(q)(i), the new language is not clear.

**This language requires school districts to forward the parent request for coordination to the service agency identified by the Secretary. The requirement is understood by those with a responsibility to administer.**



**Commonwealth of Pennsylvania**  
**STATE BOARD OF EDUCATION**

March 20, 2001

Mr. Robert E. Nyce  
Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, 333 Market Street  
Harrisburg, PA 17126

Re: Regulation #6-270 (IRRC #2144)  
State Board of Education  
Special Education Services and Programs

Dear Mr. Nyce:

The enclosed Report of the State Board of Education is submitted pursuant to Section 7 (c) of the Regulatory Review Act, in response to the March 8, 2001 Order of the Independent Regulatory Review Commission (IRRC) in the above referenced matter. This Report includes the revised final-form regulation, the Commission's disapproval Order, and the State Board's response.

The Act provides that the Commission has seven days from the end of the Committee review period, or until its next public meeting, whichever is later, to take action.

The State Board of Education will provide the Commission with any assistance you require to facilitate a thorough review of these revised final-form regulations.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Peter H. Garland".

Peter H. Garland  
Executive Director

Enclosure

cc: Gregory E. Dunlap, Esquire  
Linda C. Barrett, Esquire

TRANSMITTAL SHEET FOR  
NOTICE PURSUANT TO SECTION 7(A)  
OF THE REGULATORY REVIEW ACT

RECEIVED  
2001 MAR 20 PM 12:30  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

DEPARTMENT: Education ID NUMBER: 006-270  
SUBJECT: Special Education Services and Programs  
PA CODE CITE: 22 Pa. Code, Chapter 14 and 342

Type of Report:

Agency report containing revised final-form regulation, the findings of the Commission and agency response and recommendation regarding the final-form regulation, filed pursuant to Section 7 (c) of the Regulatory Review Act.

Filing of Notice:

<u>DATE</u>	<u>SIGNATURE</u>	<u>AGENCY</u>
<u>3/20/01</u>	<u>Jane Demko</u>	Governor's Office (333 Market St.)
<u>3/20</u>	<u>Eleonor Romano</u>	House Committee
<u>3/20</u>	<u>V. O'Leary</u>	
<u>3/20</u>	<u>10 Hook</u>	Senate Committee
<u>3/20</u>	<u>J. Ginges</u>	
<u>3/20/01</u>	<u>J. Bennett</u>	Independent Regulatory Review Commission