

Regulatory Analysis Form

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INDEPENDENT STATUTORY
REVIEW COMMISSION



(1) Agency

State Board of Education

(2) I.D. Number (Governor's Office Use)

006-270

IRRC Number: **2144**

(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 X
Final Order Adopting Regulation
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.

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 proposal revises Chapter 14 and deletes Chapter 342.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

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 *Federal Register*, March 12, 1999, Vol. 64, No. 48.
PARC v. Commonwealth Consent Decree

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(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 proposed 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.

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(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's Standing Committee on Special Education 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 proposed rules. 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.

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(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

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(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
SAVINGS:	\$	\$	\$	\$	\$	\$
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
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

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

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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.

Current regulations for special education are 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 proposed for deletion (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 state 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.

Three public hearings are anticipated in the public comment period. The information regarding them will be available at the time of publication in the Pennsylvania Bulletin.

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 proposed 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 proposed 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)

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INDEPENDENT HISTORY
REVIEW COMMISSION



DO NOT WRITE IN THIS SPACE

#2144

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

[Signature]
BY: _____
(DEPUTY ATTORNEY GENERAL)

AUG 23 2000

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. 6-270

DATE OF ADOPTION: _____

BY: *[Signature]*
Executive Director

TITLE: _____
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved a.
form and legality. Executive or Indepe
ent Agencies.

[Signature]

7/24/00

DATE OF APPROVAL

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

Check if applicable. No Attorney Ge
eral approval or objection within
days after submission.

Proposed Rulemaking
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 proposes to amend Title 22 of the *Pennsylvania Code* Chapter 14 (relating to special education services and programs) and delete 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).

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.

Purpose

The proposed revisions to Chapter 14 are designed to align with the Federal Individuals with Disabilities Education Act (IDEA), as amended June 4, 1997, and related Federal regulations, and applicable provisions of Pennsylvania statute and court decisions.

The Board determined that many areas in the Federal rules are sufficiently detailed to provide for effective implementation and; therefore, are proposed to be adopted by reference.

Additional language is found in this proposal where 1) Federal rules require greater detail for implementation; 2) court decisions applicable to Pennsylvania require regulations; and, 3) current Pennsylvania practice in special education requires provisions in regulations.

Proposed Chapter 14 includes provisions currently in Chapter 342 necessary for the implementation of special education programs and services. As a result, Chapter 342 is proposed for deletion.

Rulemaking on Chapter 14 will become a part of the eligibility grant application to the United States Department of Education under the Individuals with Disabilities Education Act ensuring the provision of a free appropriate public education to students and children with disabilities. Copies of the eligibility grant application will be made available to the public through the Pennsylvania Department of Education.

In separate rulemaking, the Board has proposed removing provisions for special education for gifted students from current Chapters 14 and 342 and establishing them in a separate new Chapter 16 (special education for gifted students). Those regulations are proceeding in the final-form phase of the regulatory review process and will be published shortly.

Requirements of the Regulations

The proposed revisions to Chapter 14 regulations adopt terminology, establish the purpose, specify timelines for development and implementation of Individualized Education Program (IEP) plans, maintain requirements regarding extended school year services, require behavior support in addition to the Federal requirements, and govern facilities in which special education is to be delivered. Major elements of the proposed rules include:

ALIGNMENT WITH APPLICABLE STATUTES—Proposed revisions to Chapter 14 affirm the Board’s intent that children with disabilities be provided quality special education services and programs consistent with Federal and Commonwealth statute. The proposed rules define terms as they apply to children with disabilities and the responsibilities of schools to provide a free appropriate public education for these students (Sections 14.102-103). To accomplish this, all sections of current Chapter 14 are proposed for deletion with the proposed text beginning at 14.101.

SCHOOL DISTRICT AND INTERMEDIATE UNIT PLANS – Proposed revisions to Chapter 14 at Section 14.104 delegate decisions regarding the format, content and timeline for submission of school district and intermediate unit plans to the Secretary. Submission of school district plans is consistent with the submission of strategic planning as required under Chapter 4. Intermediate Units’ submission of special education plans is consistent with Federal regulatory duties and with the provision of services to preschool children served under Act 212 of 1990 (Early Intervention Service System Act).

CHILD FIND AND SCREENING– Proposed revisions to Chapter 14 identify the responsibilities of school districts to find students who may need special services and programs as prescribed by IDEA for school aged children. Proposed section 14.121 retains duties to provide public notice on a periodic basis to ensure that parents and others are able to assist in this effort. The requirement to screen students who are thought to be disabled is retained in the revisions (Section 14.122). The proposed rules provide options to school districts in carrying out the child find responsibility through the use of Instructional Support Teams or other procedures designed locally (Section 14.122).

EVALUATION AND REEVALUATION – Proposed section 14.123 retains the current total number of school days for completing the evaluation process, but eliminate intermediate timelines. In addition, proposed section 14.123 and 14.124 require evaluations and re-evaluations of students include a certified school psychologist, when appropriate, to reflect Federal requirements, and remove the current requirement that school psychologists participate in all evaluations regardless of student needs. Consistent with Federal regulations (34 CFR 300.536), these proposed rules require re-evaluation every three years or sooner if requested by a parent or local education agency (Section 14.124). The current requirement for reevaluation is every two years. A two-year re-evaluation timeline for students who are mentally retarded and protected by the *PARC v. Commonwealth* Consent Decree (334 F. Supp. 1257 (E.D. Pa. 1971) and 343 F. Supp. 279 (E.D. Pa. 1972)) is retained in section 14.124.

REVIEW OF EVALUATION REPORT – General timelines for IEP meetings are required in Federal rules. Proposed section 14.131 retains the current provision for parents to receive a copy of the evaluation report 10 days prior to the IEP team meeting. The 10-day review period may be waived by the parent.

EDUCATIONAL PLACEMENT – Under Federal regulations, educational placement for students with disabilities must be determined on a child-by-child basis. Proposed revisions to Chapter 14 retain the application of caseload maximums from Chapter 342 which limit the number of students assigned to any special education teacher (Section 14.142). Class-size limitations--the number of students in a class at any one time--are proposed for repeal. In proposed section 14.141, school districts are permitted to develop caseloads other than those found in section 14.142 upon Department approval. The Department's intervention is required if the district developed caseload is determined to be inadequate by specified indicators in section 14.141. Changes in caseloads for speech therapy in this proposal are designed to clarify current confusion in their implementation in section 14.142.

DISCIPLINARY PLACEMENTS – Revisions to Chapter 14 rules retain the number of days a student with disabilities may be suspended in a school year, the number of consecutive days of suspension constituting a change in placement, and the additional protections of students identified as mentally retarded as required by the *PARC v. Commonwealth* Consent Decree (Section 14.143).

EARLY INTERVENTION-- Revisions to Chapter 14 retain rules governing early intervention child find, public awareness and screening. To reflect current practice in the field, the frequency for re-evaluation of early intervention children in these proposed rules is changed from once every year to once every two years or sooner if requested by a parent or local education agency (Section 14.153). Proposed section 14.154 requires the IEP to be reviewed annually rather than semi-annually to reflect practice in the field. The right of parents to request IEP meetings more frequently is retained. Proposed sections 14.156--158 address the additional responsibilities for the early intervention system of quality assurance of services, exit criteria and data collection and confidentiality required by Act 212.

LEVELS OF DUE PROCESS – Current requirements for prehearing conferences, due process hearings and appeals are retained. Sections 14.161 and 14.162 include new duties with regard to expedited hearings and dissemination of electronic record of transcripts and decisions as required in Federal statute and regulation.

REPRESENTATION IN DUE PROCESS HEARINGS – Based on its review under the Commonwealth Attorneys Act, on August 8, 2000 the Office of Attorney General requested that §14.162(i) be changed prior to publication of the proposal in the Pennsylvania Bulletin to make it clear that, both under federal statute and regulations and pursuant to state law, licensed attorneys only may represent parents in due process proceedings. Federal statute provides for parties to be accompanied and advised by individuals with special knowledge or training in special education but those individuals

may not perform any functions that constitute the practice of law. Section 14.162(i) as proposed in Annex A clarifies the roles of legal representation and the participation of other knowledgeable persons in due process hearings

OTHER PROVISIONS IN THESE PROPOSED RULES—These include the retention of rules governing facilities for special education currently found in Chapter 342 (Section 14.144); the elimination of provisions for experimental programs which have not been used by the field; and the elimination of rules governing course completion, diplomas and planned courses now found in Chapter 4 (Academic Standards and Assessment).

Affected Parties

Students who need or may need special education services and programs will be affected by these regulations. The proposed regulations also will 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 will be 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)), the State Board of Education submitted a copy of these proposed regulations on August 23, 2000 to the Independent Regulatory Review Commission and to the Chairpersons of the House and Senate Committees on Education. In addition to submitting the regulations,

the State Board of Education has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If the Committees have objections to any portion of the proposed amendments, they will notify the Board within 20 days of the close of the public comment period. Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Board within 10 days of the close of the Committees' comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Board, the General Assembly and the Governor of objections raised.

Public Comments and Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to Peter H. Garland, Executive Director of the State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333 **within 30 days following publication in the Pennsylvania Bulletin**. Persons needing additional information regarding this proposal may contact Peter H. Garland at (717) 787-3787. Copies of the proposed regulations are available by calling (717) 787-3787, the TDD at (717) 787-7367, or by accessing the State Board's website at <http://www.pde.psu.edu/regs/regulations.html>.

The Federal regulations to be adopted by reference 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. Garland.

Alternative formats of the proposed regulations (e.g. braille, large print, cassette tape) can be made available to members of the public upon request to Dr. Garland at the telephone numbers and address listed above. Public comment is welcomed in alternative formats, such as Braille or taped comments and telephone comments from persons with disabilities. Persons who are disabled and wish to submit comments by telephone should call Nancy Zeigler at (717) 783-6134 or TDD (717) 787-7367.

In addition, public hearings on the proposal will be conducted by the Board. Hearings will begin at 9:00 a.m. and conclude at 4:00 p.m. Dates and sites are as follows:

September 15, 2000 --

Harrisburg Office of PA Training and Technical Assistance Network
(formerly Central Instructional Support Center)
Suite 600
6340 Flank Drive
Harrisburg, PA

September 21, 2000 --

Philadelphia Office of PA Training and Technical Assistance Network
(formerly Eastern Instructional Support Center)
Main Conference Room
200 Anderson Road
King of Prussia, PA

September 25, 2000 –

Hampton Banquet Hall
(across from Pittsburgh Office of PA Training and Technical Assistance Network
(formerly Western Instructional Support Center))
5416 Route 8
Gibsonia, PA

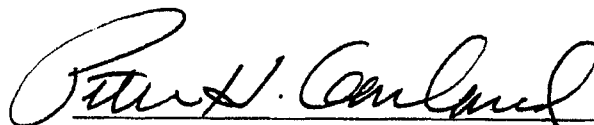
Persons wishing to testify at any of the hearings should contact the Board office no later than 4 p.m. on September 12, 2000 at the address and telephone numbers given in this Preamble. Testimony will be scheduled on a first-come, first serve basis.

Twenty-five (25) copies of the oral testimony at the time of presentation are requested.

Persons unable to appear and present testimony at a hearing are encouraged to submit written comments to the Board. Written and alternative formats of comments will be afforded the same thoughtful consideration by the Board as testimony.

Persons with disabilities needing alternative means of providing public comment may make arrangements by calling Dr. Garland.

By the State Board of Education:

A handwritten signature in black ink, appearing to read "Peter H. Garland", written over a horizontal line.

Peter H. Garland

Executive Director

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 Purpose.

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 Educational placement.

14.142 Caseload for special education.

14.143 Disciplinary placements.

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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.

IMPLEMENTATION SCHEDULE

14.171 Implementation.

GENERAL PROVISIONS

§14.101 Definitions.

In addition to the definitions in §14.102 (relating to purposes) 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 Act 22 of 1997, 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 Chapter 11, §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 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 of Education 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. 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.

Secretary - The Secretary of the Department.

§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 reference herein to satisfy the statutory requirements under the Individuals with Disabilities Education Act (20 USC §§1400-1419) and to ensure that:

(i) All 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 in the *Federal Register*, March 12, 1999, Vol. 64, No. 48, pages 12418-12469. The following sections are incorporated by reference as if fully set forth herein:

(§§300.4-300.6), (§300.7(a) and (c)), (§§300.8-300.24), (§300.26), (§§300.28-300.29), (§§300.121-300.125), (§§300.138-300.139), (§300.300), (§§300.302-300.309), (§300.311(b)(c)), (§300.313), (§§300.320-300.321), (§300.340), (§§300.342-300.346), (§300.347 (a)(b)(d)), (§§300.348 -300.350), (§300.403), (§§300.450-300.462), (§§300.500-300.515), (§§300.519-300.529), (§§300.531-300.536), (§§300.540-300.543), (§§300.550-300.553), (§§300.560-300.574(a)(b)), and (§300.576).

(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.

§14.104 Educational plans.

- (a) Each school district shall develop a special education plan 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 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 all 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 §1402 of the Public School Code of 1949 (24 P.S. §14-1402) for the purpose of identifying students with hearing or vision difficulty such 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 §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 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 (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.

(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.

(e) Screening activities shall 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) must include a certified school psychologist where appropriate.
- (b) In addition the requirements incorporated by reference at 34 CFR §300.531 through §300.535 (relating to initial evaluation, evaluation procedures, determination of eligibility, procedures for determining eligibility and placement), 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 must include a certified school psychologist where appropriate.
- (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 identified as mentally retarded shall be reevaluated at least once every 2 years.

IEP

§14.131 IEP.

(a) Notwithstanding 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 days prior to the meeting of the IEP team. A parent may waive this 10 day rule.

(2) 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 until a new IEP is developed and implemented and until the completion of due process proceedings under this chapter.

(3) 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) Every student receiving special education and related services provided for in an IEP developed prior to **(insert date amendments are adopted)** 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), 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, then 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 programs. Behavior management 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.

(b) Notwithstanding the requirements incorporated by reference at 34 CFR §§300.24(b)(9)(vi), (13)(v), 300.346(a)(2)(i), 300.346(d), and 300.520(b) and (c), 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 - 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).
 - (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 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:

- (i) Autistic Support - Services for students with the disability of autism.
- (ii) Blind and Visually Impaired Support - Services for students with the disability of visual impairment, including blindness.
- (iii) Deaf and Hard of Hearing Impaired Support - Services for students with the disabilities of deafness or hearing impairment.
- (iv) Emotional Support – Services for students with the disability of emotional disturbance.
- (v) 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.
- (vi) 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.
- (vii) Learning Support – Services for students with a disability whose primary identified need is academic learning.
- (viii) Life Skills Support – Services for students with a disability focused primarily on the needs of students for independent living.
- (ix) Multiple Disabilities Support - Services for students with multiple disabilities.

- (x) 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.
- (xi) Physical Support - Services designed primarily to meet the needs of students with the disabilities of orthopedic or other health impairment.
- (xii) 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.
- (xiii) Speech and Language Support - Services for student with the disability of speech and language impairment.

(2) Each school district shall establish caseloads for special education and submit a caseload chart to the Department for approval as part of their special education plan consistent with §14.104 (relating to educational plans). The caseload and supporting documents submitted shall:

- (i) Ensure the ability of assigned staff to provide the services required in each student's IEP.
- (ii) Apply to all special education classes operated in the school district.
- (iii) Provide a justification for why the policy deviates from the recommended caseloads at §14.142 (relating to caseload for special education), if applicable.

(3) The caseloads of the district operating the program or in which an IU 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 where

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.

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

(5) The Department may impose caseloads on agencies when the caseload is determined to be inadequate. The Department will consider at least the following indicators when making the determination:

(i) Graduation rates of students with a disability.

(ii) Drop-out rates of students with a disability.

(iii) Post secondary transition of students with a disability.

(iv) Rate of grade level retentions.

(v) Statewide and district-wide assessment results as prescribed by 22 Pa. Code §4.51 and §4.52 (relating to State assessment system and Local assessment system).

(6) 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 (relating to educational plans). 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 all 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).

§14.142 Caseload for special education.

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

<u>Type of Service</u>	<u>Itinerant</u>	<u>Resource</u>	<u>Part-time</u>	<u>Full-time:</u>
<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>

§14.143 Disciplinary placements.

- (a) Notwithstanding the requirements incorporated by reference, at 34 CFR §300.519(b) (relating to change of placement for disciplinary removals), a series of nonconsecutive removals from school occurring on more than 15 school days in a school year will be considered a pattern so as to be deemed a change in educational placement.
- (b) Any 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) (relating to authority of school personnel) 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.
- (iv) 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.

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.

§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 must 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. With regard to the adoption of 34 CFR §300.344(a)(4) (relating to IEP team), the agency representative should 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 **(insert date amendments are adopted)** 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 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, but are not limited to, 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).

§14.156 System of quality assurance.

The Department will assure in accordance with §875-302(b) (relating to program regulations and standards) 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; and provision of assistance to assure compliance. These requirements will apply to those programs operated by the early intervention agency directly or those providers contracted by the early intervention program. Monitoring will include, but not be limited to, 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 be 10-40 children with no more than six 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 – one staff member for every three eligible young children, with a maximum class size of nine.

(B) 18 –36 months – one staff member for every four eligible young children, with a maximum class size of 12.

(C) 36 months and up – one staff member for every six eligible young children, with a maximum class size of eighteen 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 ten to twenty 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 ten to fifty 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 §875-301(1) of the Act (11 P.S. §875-301(1)) (relating to requirements), children shall be exited 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 these regulations 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 interests of the student or young child.

- (1) In addition to the requirements incorporated by reference at §§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 to convene a prehearing conference in instances when the parent disapproves the school district's proposed action or refusal to act.
- (2) When requested, the school district shall convene the prehearing conference within 10 days of receipt of the parent notice and shall be chaired by the superintendent or the superintendent's designee.
- (3) If the prehearing conference results in agreement, the provisions under §14.131 (relating to IEP) shall be applied. Within 5 calendar days of the agreement, a parent may notify the school district in writing of a decision not to approve the recommended assignment. In instances where a parent gives notice not to approve the recommended assignment, 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 (relating to impartial due process hearing and expedited due process hearing.).

§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 the parents disagree 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.

(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 when the district, or the early intervention agency in the case of a young child, has not been able to obtain consent from the parents or in regard to a matter under subsection (b).

(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 reasonably convenient to the

parents. 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 reasonably convenient to the parents. 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 to the public unless the parents request a closed 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 written 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 such hearing officers and appellate hearing officers for their services. The compensation does not cause such 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. 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.

(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 set out under (i) through (iii) at the request of either party.
- (5) If an expedited hearing is conducted pursuant to 34 CFR §300.528, the hearing officer decision must be mailed within 45 days of the public agency's receipt of the request for the hearing without exceptions or extensions.
- (r) 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.



Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

August 23, 2000

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

Dear Mr. Nyce:

Enclosed are copies of proposed regulations for review by your Commission pursuant to the Regulatory Review Act. The proposed regulations, Chapters 14 and 342 relate to special education services and programs.

The Regulatory Review Act provides that the Commission must, within 10 days from the closing date of the Committees' review period, submit comments to the Board regarding the regulations. We anticipate that the regulations will be published in the Pennsylvania Bulletin on September 2, 2000.

The State Board of Education will provide your Commission with any assistance you may require to facilitate a thorough review of these proposed regulations.

Thank you for your consideration.

Sincerely yours,

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

Peter H. Garland
Executive Director

cc: Gregory Dunlap, Esq.
Linda Barrett, Esq.

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 6-270
 SUBJECT: Special Education Services and Programs
 AGENCY: DEPARTMENT OF EDUCATION – STATE BOARD OF EDUCATION

TYPE OF REGULATION

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
 2000 AUG 23 PM 4: 19
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
8/3	<i>B. O'Leary</i>	HOUSE COMMITTEE ON EDUCATION
8/23	<i>Clara Roman</i>	
8/23	<i>S. Baker</i>	SENATE COMMITTEE ON EDUCATION
8/23	<i>D. Giner</i> <i>Tim Giner</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
8/23/00	<i>John Han</i>	LEGISLATIVE REFERENCE BUREAU