



PENNSYLVANIA
SCHOOL BOARDS
ASSOCIATION, INC.

774 LIMEKILN ROAD, NEW CUMBERLAND, PA 17070-2398 / (717) 774-2331 / FAX (717) 774-0718

RECEIVED
2001 FEB 28 AM 9:12
REVIEW COMMISSION

February 26, 2001

Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Dear Mr. Nyce:

The Pennsylvania School Boards Association would like to comment once again on revisions to 22 Pa. Code, Chapter 14, regarding special education services and programs, as proposed by the State Board of Education.

PSBA believes that the approach taken by the State Board to adopt by reference federal special education requirements while maintaining some Pennsylvania-specific provisions will adequately retain essential due process protections and assurances for all children with disabilities.

The task of revising this chapter provides a critical opportunity for the state to redesign its rules for special education by including important protections mandated by federal requirements and providing relief to local school districts by minimizing the current extensive state requirements that exceed federal law. The board is to be commended for its efforts to provide opportunities for all interested parties to make recommendations as the revisions were being crafted. Indeed, we have noted in our previous comments that as each subsequent draft was issued, an increasing number of Pennsylvania-specific provisions under the current rules were incorporated into the document. The chapter as proposed does address various concerns of certain groups, although some will continue to advocate nothing less than the complete restoration of the existing regulations.

PSBA supports the proposed final-form Chapter 14 regulations. Currently, Pennsylvania's special education regulations far exceed those imposed at the federal level. Consequently, school entities have been burdened with excessive requirements that impose both staffing and budgeting difficulties. Compounding these problems is the state's funding system for special education, which does not contemplate the number of special education students served or the actual costs of special education programs in each school entity.

Mr. Robert Nyce
February 26, 2001
Page 2

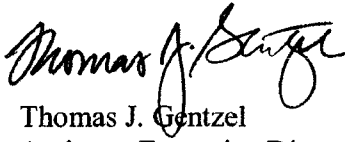
One of the more contentious issues surrounding this debate has been the removal of the special education class size chart. Currently, this chart mandates the maximum allowable number of students in one special education class. It also is an instance where state regulations exceed federal requirements.

Some see the loss of this to be a weakening or abandoning of the state's special education program. This is simply not true. The proposed regulations do contain maximum caseload restrictions for teachers. While school districts could petition the Department of Education for exceptions to these rules, the proposal must meet certain requirements, including opportunities for input from parents, teachers and other interested parties. Additionally, any changes proposed for the caseload chart must be in line with a school entity's strategic plan. This provides yet another opportunity for public comment and review, since the strategic planning process requires the solicitation of public input.

The approach taken by the State Board to address educational placement by eliminating the mandated class size chart while establishing caseload restrictions provides local school officials with some needed flexibility and maintains general guidelines for staffing needs.

PSBA concludes that an extensive mandate for special education remains. Federal law and regulations contain substantive responsibilities and standards of performance for school districts. Chapter 14 as proposed seeks to achieve the right balance – that is, protecting students while ensuring that the program is delivered efficiently and effectively. We believe these rules are a major step forward to achieving that goal.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas J. Gentzel". The signature is fluid and cursive, with the first name "Thomas" being the most prominent part.

Thomas J. Gentzel
Assistant Executive Director
Governmental and Member Relations

An Educational Service Agency

Original: 2144

Dr. Frank J. Ferrari, Executive Director
Robert J. Keegan, Jr., Assistant Executive Director

Mr. Robert E. Nyce
Executive Director, IRRC
333 Market St. 14th floor
Harrisburg, Pa. 17101

Dear Mr. Nyce,

We are writing with great concern about the Chapter 14 Draft. We need to include a case load/class size chart in Chapter 14 or it will be disastrous to the quality of special education in our state. We are asking for your immediate attention to this matter. Do not let this draft pass. Send it back to the drawing board!

Sincerely,

Educational Consultants, IU 21

RECEIVED
2001 FEB 26 AM 9:29
REVIEW COMMISSION

Original: 2144

RECEIVED

2001 FEB 28 AM 9:10

INDEPENDENT REGULATORY
REVIEW COMMISSION

17 Ward Way
Mifflinburg, PA 17844-0111
February 26, 2001

Independent Regulatory Review Commission
14th Floor, Harrisstown 2
333 Market Street
Harrisburg, PA 17101

Dear Sirs:

I understand that the Independent Regulatory Review Commission, as part of the regulatory review process, will be considering the State Board's revisions to 22 Pa. Code Chapter 14 and accompanying deletion of Chapter 342. I am writing to urge your rejection of the State Board's revisions to Pennsylvania's special education regulations and standards as written.

I offer the following comments as a practicing school psychologist and trainer of school psychologists at a major Pennsylvania university. I have spent 33 years working with children and adults with disabilities, and am a Fellow of several professional organizations, including the American Association on Mental Retardation, American Psychological Society, and Pennsylvania Psychological Association.

The changes on class size limits has diverted attention away from far more important problems with the regulations—particularly in their vagueness and imprecision that can lead to unpredictable and contradictory actions on the part of school districts. While there are too areas to detail, I would like to offer two examples in areas where I have considerable expertise. Both areas of concern derive from the reality that the Federal regulations alone were never intended to supply the procedures necessary to put into practice the Individuals with Disabilities Education Act (IDEA). This appears to be evident in the IDEA regulations themselves since the "State [must] have on file policies and procedures that ensure that the requirements of §300.530-300.536 (dealing with evaluations) are met."

My first area of concern is the imprecision in the definitions of various disabilities. Pennsylvania's definitions have customarily been less specific than many state's, but the current regulations take this to extremes. As an example, Pennsylvania has permitted the identification of children as mentally retarded when their IQs were below 80. This has been based on a phrase in the current Chapter 342, which is being revoked. Adoption of the IDEA regulations without further specification appears to remove the legal justification for this practice. While I support not identifying children with IQ scores in the 70s as mentally retarded, the implications of the regulatory change has not been understood by many educators or parents I have talked to.

A parallel situation occurred in New York State, as evidenced by the following except from a recently-released clarifying memo.

9. What standard should be adhered to determine "significantly subaverage general intellectual functioning" for the classification of mental retardation?

The amendments to Part 200 of the Regulations of the Commissioner (January 2000) repealed the criteria that a student consistently demonstrate general intellectual functioning that is determined to be 1.5 standard deviations or more below the mean of the general population on the basis of a comprehensive evaluation. The amended definition of mental retardation, consistent with the federal definition, requires that the student demonstrate significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

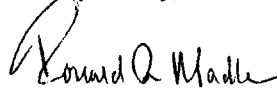
For the purposes of determining what constitutes "significantly subaverage general intellectual functioning," professionals may refer to the standards set by State and national organizations. For example, the American Association of Mental Retardation (AAMR) indicates that intellectual functioning level (IQ) that is below 70-75 would constitute significantly subaverage general intellectual functioning. According to another source, "significant limitations in intellectual functioning are determined from the findings of assessment by using a valid and comprehensive, individual measure of intelligence that is administered in a standardized format and interpreted by a qualified practitioner. The criterion of significance is an IQ or comparable normed score that is two or more standard deviations below the population mean for the measure."

The changes from the current Pennsylvania disability definitions to the IDEA definitions may create some problems which, if not clarified in the proposed regulations, will be resolved only through costly due process hearings and/or additional guidelines after they have created unnecessary adversarial relationships between parents and schools.

A second area of substantial concern is the vagueness as to who can conduct evaluations to identify children with various disabilities. While certified school psychologists now have been included as mandated members of the "the group of qualified professionals which reviews the evaluation materials" there still remains little direction on what types of evaluations are needed and by whom (school psychologists, other psychologists, speech and language specialists, physicians, vision specialists, and so forth) they can be conducted. Several states (e.g., Tennessee and Georgia) that have released regulations following IDEA'97 have provided LEAs with detailed specification of the types of professionals and information needed for each type of disability being considered. This also seems necessary based on the section of the IDEA regulations quoted above.

Once again, I am asking you to reject the State Board's recommended revisions to Pennsylvania's special education regulations and standards, as approved at their January 2001 meeting, and have them returned to a work group that includes "qualified professionals," as defined in IDEA, for further development.

Respectfully,



Ronald A. Madle, Ph.D., NCSP, FAAMR
PA Certified School Psychologist
PA Licensed Psychologist

Original: 2144

February 25, 2001

Edward and Leonardia Karpowicz
115 West Grand Street
Nanticoke, PA 18634

RECEIVED
2001 FEB 29 AM 9:01

REVIEW COMMISSION

Dear Sir,

We are alarmed that the IRRC is considering the removal of regulations that limit class size in Special Education Programs from Chapter 14. We are also alarmed about legislators that would remove restrictions from the mixture of children in a special Ed class, such as mixing age groups.

The State's Special Ed regulations Chapter 14 has long suppressed the Federal IDEA act in dealing with disabled children. Let's keep it that way and vote against any of the above changes that would greatly weaken Chapter 14 and hurt these children and their families.

Sincerely yours,

Leonardia Karpowicz
Edward B. Karpowicz
Edward and Leonardia Karpowicz

Original: 2144

RECEIVED

2001 FEB 23 AM 11:55

REVIEW COMMISSION

PENNSYLVANIA CATHOLIC CONFERENCE

P.O. BOX 2835

223 NORTH STREET

HARRISBURG, PA 17105-2835

PHONE# 717/238-9613

FAX# 717/238-1473

TO: Mr. Robert E. Nyce
Executive Director

FROM: Fredrick Cabell, Jr., Esq.
Director, Education Department

DATE: February 23, 2001

SUBJECT: Proposed Chapter 14 Regulations (Special Education)

PAGES: 4, (including cover page)

FAX MESSAGE



PENNSYLVANIA CATHOLIC CONFERENCE

223 North Street • Box 2835 • Harrisburg, PA 17105 • (717) 238-9613 • FAX (717) 238-1473

February 22, 2001

VIA FAX AND MAIL

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th floor, Harristown 2
333 Market Street
Harrisburg, PA 17126-0333

Re: Proposed Chapter 14 Regulations (Special Education)

Dear Mr. Nyce:

The Pennsylvania Catholic Conference ("PCC") has reviewed the proposed Final Form Regulations of the State Board of Education regarding Chapter 14 regulations (relating to Special Education Services and Programs), which are now under consideration by the Independent Regulatory Review Commission. PCC's review focused on those provisions which might affect nonpublic school children.

As we understand them, the proposed regulations would eliminate the present Chapter 14 and Chapter 342 regulations and replace them with a much more condensed set of special education requirements and standards. In place of the current regulations, the new Chapter 14 would simply incorporate the bulk of the new Federal regulations (34 CFR Part 300) as those regulations relate to the obligations of LEA's.

Among the Federal regulations which would be adopted are those which require school districts to extend their child find and evaluation services to all children, including those who attend nonpublic schools. Also included would be the Federal regulations which assure only a collective right to a proportional amount of special education services for nonpublic school students, and remove any right to individual due process procedures for nonpublic school children (other than with respect to child find and evaluation disputes).

While the Federal regulations do permit nonpublic school children to initiate state complaints (as opposed to individual due process hearings), the proposed

Chapter 14 regulations fail to incorporate the state complaint procedures required by 34 CFR §300.660, *et seq.* We believe the new Chapter 14 regulations should formalize those required procedures.

Presently, §1372(1) of the Public School Code (24 P.S. §13-1372(1)) obligates the State Board of Education to adopt and prescribe standards and regulations for the proper education and training of *all* exceptional children by school districts. Moreover, §1372(4) of the Public School Code (24 P.S. §13-1372(4)) places a statutory obligation on intermediate units to provide such additional classes as are necessary to provide for the proper education and training for *all* exceptional children who are not enrolled in classes or schools maintained and operated by school districts or who are not otherwise provided for. A recent federal court opinion interpreting §1372 (4) has held that intermediate units, and ultimately the Pennsylvania Department of Education, do have an obligation to provide services to all exceptional children, including those enrolled in nonpublic schools. *John T. v. Delaware County Intermediate Unit*, 2000 WL 558582 (E.D. Pa. 2000). Nothing in the proposed Chapter 14 regulations in any way addresses the State Board's foregoing statutory obligation to prescribe regulations which adequately meet the needs of nonpublic school children. We believe that to be a serious deficiency in the regulations.

The proposed regulations would also eliminate 22 Pa. Code §14.41(e) which currently states as follows:

"Exceptional students and eligible young children who attend nonpublic schools shall be afforded equal opportunity to participate in special education services and programs and early intervention services and programs."

Nothing in the 1997 Federal IDEA amendments or in the regulations issued thereunder would obligate the State Board of Education to remove its own requirement that nonpublic school children be afforded "equal opportunity" to participate in special education services. Given the foregoing statutory provisions enacted by the Pennsylvania General Assembly, the State Board would appear to be abrogating its statutory responsibilities by deleting §14.41(e) of the current regulations.

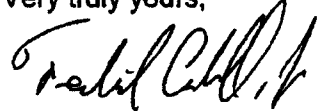
The proposed Chapter 14 regulations further make no reference at all to §502 of the School Code, which authorizes "dual enrollment" in public school programs of children who are enrolled in nonpublic schools. Section 502 has traditionally afforded nonpublic school children an opportunity to participate in public school special education programs. See, *Woodland Hills School District v. Commonwealth*, 516 A.2d 875, 877 (Pa. Cmwlth. 1986) (" 'Dual Enrollment' allows students, who are enrolled in nonpublic schools, also to enroll part-time in the District's gifted students program."). The present Chapter 14 regulations in fact contain a reference to §502 as providing a base of statutory authority for those regulations. That reference is not present in the proposed regulations. PCC

believes that the proposed regulations should make some specific provision for dual enrollment options for nonpublic school children.

Under the proposed regulations (§14.132(5)), school districts would be responsible for considering the need for extended school year services for each eligible student (which would presumably include nonpublic school students). Eligible students with disabilities are entitled to extended school year services if regression caused by interruption in educational programming and limited recoupment capacity makes it unlikely that the student will attain or maintain skills and behavior relevant to his or her established IEP goals and objectives. There may, however, be some room for school districts to dispute the eligibility of nonpublic school students for the services, given that nonpublic school students do not receive IEP's. Consequently, we believe that the regulations should also accommodate nonpublic school children who have "services plans" (34 CFR Sec. 300.452) and are in need of extended school year services.

Thank you very much for the opportunity to comment on the proposed regulations. Please feel free to contact me at any time to discuss any of the points raised herein.

Very truly yours,



Fredrick Cabell, Jr., Esq.
Director, PCC Education Department

FC/clv

cc: PCC Education Department

Original: 2144

DONNA M. MULLEN
1200 FAIRVIEW AVENUE
HAVERTOWN, PA 19083
610-446-2468

RECEIVED

2001 FEB 27 AM 8:57

REVIEW COMMISSION

February 23, 2001

Mr. Robert E. Nyce
Executive Director IRRC
333 Market Street
14th floor
Harrisburg, PA 17101

RE: Chapter 14

Dear Mr. Nyce:

I am writing to you today as a concerned parent of a special need child. My son is in a Learning Support kindergarten half day and half day regular kindergarten at our local public school.

As I'm sure you hear both positives and negatives regarding the changes regarding chapter 14, I am against the proposed draft of these regulations. Please add me to your records against the changes.

It would be a travesty for the children in special education and for the special educators to have this change occur regarding class size. The Districts are for it because of money. No doubt special education is expensive but, the children will be hurt. No one can tell me that changing class size regulations will benefit the children. Districts do not do anything their not forced to do regarding special education.

I understand that the theory behind no class size restrictions allows the District more flexibility and money could be saved to use else where or more appropriately for special education. I say yes the district will use that money but, it certainly won't be for special education students. The idea of caseloads not changing doesn't help. You have sensory issue of many special education children to consider, also.

Please vote no! Thank you and you can affect the lives of so many children and families. Please do what's best for the children who have such a small voice. Please let me know how you vote.

Sincerely,

Donna M. Mullen

Donna M. Mullen

Original: 2144



PENNSYLVANIA CATHOLIC CONFERENCE

223 North Street • Box 2835 • Harrisburg, PA 17105 • (717) 238-9613 • FAX (717) 238-1473

February 22, 2001

VIA FAX AND MAIL

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th floor, Harristown 2
333 Market Street
Harrisburg, PA 17126-0333

RECEIVED
2001 FEB 26 AM 9:24
INDEPENDENT REGULATORY
REVIEW COMMISSION

Re: Proposed Chapter 14 Regulations (Special Education)

Dear Mr. Nyce:

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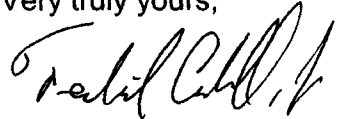
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Thank you very much for the opportunity to comment on the proposed regulations. Please feel free to contact me at any time to discuss any of the points raised herein.

Very truly yours,

A handwritten signature in black ink, appearing to read "Fredrick Cabell, Jr.", written in a cursive style.

Fredrick Cabell, Jr., Esq.
Director, PCC Education Department

FC/clv

cc: PCC Education Department



Mental Health Association

of Reading & Berks County

A United Way Member Agency

Original: 2144

February 22, 2001

**Independent Regulation Review Commission
Harristown 2 - 14th Floor
333 Market Street
Harrisburg, PA 17101**

RE: Proposed Changes to Chapter 14

To Whom It May Concern:

As an advocate for children with special needs working in the 18 school districts of Berks County, I am aware of the serious damage that the proposed changes would inflict upon the education of the children that I serve. The elimination of limits upon class size defeats the concept of providing the children with more individual attention. The insistence to incorporate by reference prevents parents from knowing what the laws and regulations are concerning their child's education. Elimination age range regulations would allow districts to further reduce the possibility of properly educating children by placing all ages together in one class.

I urge the Committee to carefully consider the consequences of the proposed changes and the deleterious effects upon families and children with special needs.

Sincerely,

**Karen Hager
Children and Youth Advocate**

RECEIVED
2001 FEB 27 AM 8:55
INDEPENDENT
REGULATION
REVIEW COMMISSION

Original; 2144

IRRC

From: WilliamFrancis [billyfrancis@intergrafix.net]

Sent: Saturday, February 17, 2001 4:09 PM

To: IRRC@irrc.state.pa.us

Subject: Chapter 14

To Whom It May Concern:

I would like to express my concern over the current revision of Chapter 14 and what it means to children who receive Special Education Services.

The current document does not require classroom size limitations. I find this to be ludicrous. We have a President who supports smaller classroom sizes for typical children. PA recently chose to place a limit on classroom sizes for GIFTED students. *The children with Special Needs are being discriminated against.* Their needs are many. In order to survive in our communities and become active, tax-paying citizens, they will require **MORE** attention in the classrooms, not **LESS!**

I also find the language in the current document to be difficult for many parents to understand. Unfortunately, I believe that is the intent.

I am co-chair of a support group for parents of children with disAbilities. We actively involve about *45 families* in NE PA. None of us -whatever our child's current placement in the system- are pleased with what has happened to Chapter 14.

We are even **MORE** displeased that our *voices* have been ignored. Many individuals will feel the result of that in the next election. I understand from many sources that most Senators found their offices overwhelmed with communication from parents who found fault with this document -yet our input was ignored by many.

Thank you for taking the time to listen to my concerns.

Diana Morris Francis

Co-chair - PERC and Project A.B.L.E., Outreach coordinator & former Ass't. Manager - Special Olympics/Hazleton, Board Member Heights-Terrace E/M School PTA, Luz. County Child Advocacy Committee, P2P Mentor, HASD Transition Council Member, DisAbilities Consultant Hazleton YMCA?YWCA, Special Ed. Buddy -Ed. Law Center, Parent Leadership Council - internet Advocacy list, etc.

1424 Johns Ave.
Hazleton, PA 18201

2/20/2001

Original: 2144

IRRC

From: zheroux [zheroux@gateway.net]
Sent: Friday, February 16, 2001 11:58 AM
To: IRRC@irrc.state.pa.us
Subject: Chapter 14

Please, please, please reject Chapter 14. There are no limits on the class size and teacher caseloads - this change would be a disaster in Special Ed. My son wouldn't stand a chance of learning in a class of 25 students in a Learning Support classroom, which is what my school district would do if you vote for Chapter 14 as it stands.

Please do right by the children and vote NO on Chapter 14.

Thank you,
Terry Ziedonis
A concerned parent & taxpayer

FACSIMILE

Original: 2144

Date: Feb. 16, 2000

From: Lori Ratajczak

Phone: 215/898-5029

To: IIRC commissioners

Fax: 717/783-2664

Phone: 717/783-5417

Subject: vote NO to proposed Chapter 14 revisions

Number of pages (including cover): 6

Please confirm receipt ()

Mailing to follow ()

Message: Attached are copies of a letter I am also sending to each commissioner via U.S. Mail. In addition, I have E-mailed a copy of this letter to iirc@iirc.state.pa.us.

RECEIVED
2001 MAR -2 PM 4:56
REVIEW COMPLETED

Original: #2144

1429 Center Street
West Chester, PA 19382-6528
March 2, 2001

Mr. John R. McGinley, Jr., esq.
Chairman, Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA, 17101

Dear Mr. McGinley:

I am the mother of an eight-year-old boy with autism. When he was first diagnosed at age 3 1/2, he did not greet people, or respond when others said hello. Though he could talk, he could not ask for what he wanted using words; he would take me by the hand and use my hand to reach for what he wanted. If I couldn't guess what he was trying to make me get for him, he would become so frustrated that he would scream and kick. He did not play with other children, and when he did play at all, he repeatedly rolled a toy car back and forth in front of his eyes, watching the wheels spin.

Today, he spontaneously says, "hi!" to others, and responds when they greet him. He uses complete sentences to request things. He still tends to ignore other kids, but he plays appropriately with playground equipment, Legos, computer games, and other toys. He is even beginning to learn to read, write, and count. There is hope that he will grow up to become a contributing member of society.

My son would never have made this progress without the help of special education. The protections currently provided in Chapter 14—such as class size limits and the inclusion of a behavior plan in his Individualized Education Program (IEP)—have been vital for him to succeed in meeting his IEP goals.

However, I have heard that the Independent Regulatory Review Commission is considering revising Chapter 14 and removing many of the protections it currently provides. This would have many unpleasant consequences for my son and for the many other special education students in the Commonwealth.

These students face so many obstacles. Please help prevent the proposed version of Chapter 14 from handicapping these students even more.

I urge you to reject the proposed changes to Chapter 14.

Thank you very much for your help in this matter!

Very truly yours,



Lorraine A. Ratajczak

Original: 2144

PP&A

PENNSYLVANIA PROTECTION & ADVOCACY, INC.

CHILDREN'S PROJECT 1315 Walnut Street, Suite 400, Philadelphia, PA 19107

Phone: 800.583.6007 Fax: 215.625.9589 E-mail: ppakids@elc-pa.org

Kevin T. Casey *Executive Director*
Hikmah Gardiner *President*

16 February 2001

Robert E. Nyce
Executive Director
IRRC
333 Market Street, 14th Fl.
Harrisburg, PA 17101

RE: *22 PA Code Chapter 14*

Dear Mr. Nyce:

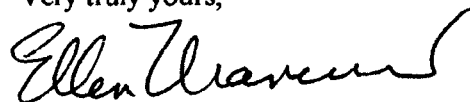
Enclosed please find comments we have recently submitted to the Senate Education Committee. A similar letter was sent to the House Education Committee.

We ask that you consider our comments in evaluating whether the IRRC should approve Chapter 14 as presently proposed by the State Board of Education. As discussed in our letter, we see significant problems with the proposal.

If we can provide any additional information, please feel free to contact me.

Thank you in advance for your kind attention to this matter.

Very truly yours,



ELLEN MANCUSO
Director, Children's Project

Enc.

Main Office
1414 N. Cameron Street, Harrisburg, PA 17103 717.236.8110
Toll Free 800.692.7443 Voice and TTY Fax 717.236.0192



PENNSYLVANIA PROTECTION & ADVOCACY, INC.

CHILDREN'S PROJECT 1315 Walnut Street, Suite 400, Philadelphia, PA 19107
Phone: 800.583.6007 Fax: 215.625.9589 E-mail: ppakids@elpa.org

Kevin T. Casey *Executive Director*
Hikmah Gardiner *President*

8 February 2001

Hon. James Rhoades, Chair
Education Committee
Senate of Pennsylvania
Harrisburg, PA 17120-3029

Hon. Allyson Schwartz, Minority Chair
Education Committee
Senate of Pennsylvania
Harrisburg, PA 17120-3004

RE: *Special Education Regulations*

Dear Senators Rhoades and Schwartz:

We write to urge you to reject the special education regulation, 22 Pa Code Chapter 14, as proposed by the State Board of Education. There are four main reasons why you should vote "no" when these regulations come before your Committee.

First, the proposed regulations lack any controls on the size of special education classes. Current regulations recognize that if children with disabilities are to receive the individualized instruction that they need, classes must be kept small so that teachers have time for each student. As proposed, the regulations would allow each district in the Commonwealth to set its own class size controls. This will undoubtedly put extensive pressure on many districts – particularly poorer districts – to increase class size solely to save money.

The lack of class size controls is not cured by the proposed regulation concerning teacher caseloads (22 PA Code Section 14.142). The caseload chart proposed is not mandatory on school districts. Rather, the proposed scheme would allow a district to implement its own caseload requirements by merely putting a different caseload chart into its special education plan [see Section 14.142(B)].

At several hearings held on the drafts of Chapter 14, school officials testified that the current class size chart creates problems due to its lack of flexibility. School districts

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Hon. James Rhoades
Hon. Allyson Schwartz
8 February 2001
Page 2.

do not want to be forced to hire an additional teacher late in the school year to accommodate children who are identified as needing special education if current classes are full. We understand and appreciate this concern. In response, we and many other parent advocacy groups have endorsed the compromise offered by the PA Federation of Teachers. This compromise would maintain current class size limits, but would allow districts to exceed those limits in up to 25% of their classes without the need to request a waiver. Additionally, districts could seek a waiver if they wanted to increase class size by 33%. We believe this compromise responds to the articulated concerns and will allow districts the flexibility they need to accommodate children who are identified late in the school year.

Second, the proposed regulations would eliminate a parent's right to be assisted at a special education hearing by a lay advocate, instead requiring the parent to hire an attorney. We see no reason why the Education Code should become the Full Employment of Attorneys Act! Parents have been permitted to have lay advocates represent them at hearings since the entry of the PARC Consent Decree in 1971 with little problem. Forcing parents to pay for an attorney places a heavy burden on them and will work to discourage parents from exercising their right to a hearing when they dispute a school district recommendation. Although under federal law parents are entitled to recoup their attorneys' fees if they prevail, virtually all attorneys require an up-front retainer, commonly as much as \$2,500. Parents should not have to obtain a second mortgage on their homes in order to protect their children's rights. Moreover, forcing the use of attorneys at hearings only works to make these procedures even more formal and adversarial.

Third, the State Board has chosen a format of "incorporating by reference" hundreds of pages of federal regulations rather than spelling out in Pennsylvania law what the special education process requires. Currently, Chapter 14 follows the special education process and clearly delineates how the process works. Under the proposed format, a parent will have to have a copy of the voluminous federal regulations and cross-reference each provision to Chapter 14. As few parents have copies of the Code of Federal Regulations or are used to dealing with complex federal regulations, they will effectively be closed out of the system. We believe that PA law should stand on its own.

Finally, the proposed Chapter 14 should be rejected because it fails to set high standards for students with disabilities. Rather than asking "what do we want for our students with disabilities," the Board asked simply, "what is the least required under federal law." We believe that the re-drafting of Chapter 14 provides an opportunity to set high standards for our students and our schools. The regulations should be returned to the State Board of Education so that a well thought out scheme can be put in place.

Again, we urge you and the Senate as a whole to reject the proposed Chapter 14.

Hon. James Rhoades
Hon. Allyson Schwartz
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Page 3.

If I can provide further information, please feel free to contact me.

Thank you for your interest in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ellen Mancuso", with a stylized flourish at the end.

ELLEN MANCUSO
Director, Children's Project

JANET F. STOTLAND
Co-Director
Education Law Center - PA

Cc: Members, Senate Education Committee

Original; 2144

IRRC

From: Black [blacka@epix.net]
Sent: Friday, February 16, 2001 4:50 PM
To: IRRC@irrc.state.pa.us
Subject: Chapter 14

As a parent of a child I am truly upset with revisions in Chapter 14 especially removal of class size restrictions. Pennsylvania should be embarrassed by such decisions. I am hoping that there can be changes made to this horrible action. Sincerely, Angie Black

IRRC

From: Nadim Hoyek [nhoyek@adelphia.net]
Sent: Thursday, February 15, 2001 5:07 PM
To: IRRC@irrc.state.pa.us
Subject: Chapter 14 regulations

As a parent of a special needs child, I am very concerned that Chapter 14 changes will go into effect as is. My concerns center around the following:

Parent representation in due process hearings: Current draft prohibits advocates from representing parents in due process hearings. Oftentimes, parents cannot afford legal representation in the form of an attorney. Just as frequently, parents need to use these hearings to get school districts to comply with IDEA. Because of the way they are written, If we as parents need to resort to the Federal regulations, it will be more difficult than it is now to get needed services. My child is only three and I have already taken on my district to get her what she needs.

Other issues:

The new regulations eliminate the requirement that Local Transition Councils exist; eliminate the requirement that localities develop local Interagency agreements.

Please send proposed Ch 14 back to State Board of Education for immediate addition of class size maximums as per the recommendation of the Pittsburgh Federation of Teachers. The idea that limits will be imposed for gifted students and not those in special education is absolutely ludicrous.

I hope you will see fit to seek additional changes in the proposed Chapter 14 regulations.

Sincerely,

Mrs. Celia A.Hoyek
choyek@adelphia.net

IRRC

From: Nancy J. Thole [nthole@epix.net]
Sent: Thursday, February 15, 2001 11:47 AM
To: IRRC@irrc.state.pa.us
Subject: Special Education Regulations

Dear IRRC Members,

I am writing to request your help and ask that it be shared with all members of the commission. Quite honestly, I feel that no one is listening to parents of children with disabilities concerning the proposed changes in Chapter 14. Aren't the students with disabilities the important issue? They should be! On behalf of myself, and other parents who are unable to write (for whatever the reasons), PLEASE, please, please listen to us and do the right thing!

If the classroom size and the teacher caseloads are not stated specifically in Chapter 14, it will be a devastating blow for the appropriate education of students receiving special education services. This should not be about saving money, this should be about serving the students. Won't you please reject the Chapter 14 Regulations as they now stand.

Thank you for taking the time to care and doing the right thing for our children.

Nancy Thole,
Mother of a student with neurological impairments

Mountain Top PA
nthole@epix.net

Original; #2144

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February 12, 2001

via facsimile

2001 MAR -6 AM 8:06

Letter to:

Senator Mike Opake

Senator David Brightbill

LEGISLATIVE

REVIEW COMMISSION

Hon. Sam Rohrer, Education Committee

Hon. Dennis Leh

Hon. Paul W. Semmel

Hon. Sheila Miller

Hon. Dante Santoni

Hon. David G. Argall

To our Senators and House Representatives,

We, the undersigned are very concerned about the current Chapter 14 and Chapter 342 items due to be voted upon on February 14, 2001 by the House and Senate Education Committees. We fear the impact these changes will have on the delivery of special education programs in Pennsylvania.

We urge you to support voting against Chapter 14.

Print Name	Sign Name	Borough	Street Address
Kathleen Protti	Kathleen Protti	Reading	1510 J Front St
Kristen Macready	Kristen Macready	Pikeville	411 Keim Rd. Poytown
Susan Becker	Susan J. Becker	Mt. Penn.	1940 Woodville Ave
Ginny Lerch	Ginny Lerch	Cumru	209 Andover Ave. W. Lawr.
Doreen Johnson	Doreen Johnson	Wyomissing	1532 Peachfield Ave. 19106
Jean Lincoln	Jean Lincoln	S. Heidelberg	924 Sportsman Rd. Wernersville
Stephanie Viola	Stephanie Viola	Phoenixville	1011 Cherry St
Louise Miller	Louise Miller	Spring Twp.	2306 Kay Ct. West Lawn 19609
Barb Fromuth	Barbara Fromuth	Wyomissing	46 Valley Rd. Wyomissing 19610
Brenda Eaton-Elezovic	Brenda Eaton	Shillington	44 Pearl St Shillington 19605
Carole DiInnocentis	Carole DiInnocentis	S. Heidelberg	124 Fox Hill Dr. Wernersville PA 19381
Mary Barbara	Mary Barbara	Wyomissing	1518 Meadowlark Rd Wyo Pt 19610
Cynthia M. Wise	Cynthia M. Wise	Sinking Spring	564 Penn Ave Sinking Spr PA 19380
Amber Mintz	Amber Mintz	So. Heidelberg	528 Hill Rd. Wernersville PA 19381

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Date 3-5-01

of pages 1

To Commissioner McGinley

From Amber Mintz

Co./Dept.

Co.

Phone #

Phone #

Fax #

Fax #

IRRC

From: Steven Banks [sbanks@mciu.org]
Sent: Monday, April 02, 2001 3:33 PM
To: IRRC@irrc.state.pa.us
Subject: <no subject>

To: Robert Nyce
Executive Director
IRRC
333 Market St. 14th Floor
Harrisburg, PA 17101

Fr: Steven Banks
Director of Special Education
Montgomery County Intermediate Unit

Re: Proposed Chapter 14

I respectfully request that the Independent Regulatory Review Commission (IRRC) approve the proposed Chapter 14 regulations as resubmitted by the State Board of Education. The regulations already exceed the federal requirements of the Individuals with Disabilities Education Act (IDEA), and therefore contain sufficient regulatory protections for children with disabilities.

Because the needs of children with disabilities routinely exceed the available resources, administrators need flexibility to direct our limited resources to serving children. In its resubmission, the State Board has made some revisions pursuant to your disapproval order of 8 March 2001. However, the Board has wisely chosen not to change the regulations in several areas. I will comment on one area.

Regarding the IRRC's concerns about the reasonableness of eliminating class size requirements, I would argue that class size requirements are an unfounded regulation.

Regulating class size ignores the reality of how special education programs and services are delivered in 2001, i.e., the caseload restrictions alone will limit class sizes to current numbers by default. Regulating class size ignores the fact that the IDEA contains more than enough individual procedural protections for children with disabilities. Regulating class size diverts our limited resources away from serving children.

I would point out that the Montgomery County Intermediate Unit currently operates support classrooms which we self-limit because it is the right thing to do for children. For example, we self-limit (restrict enrollments) in our emotional support classrooms to 8-10 children, 2-4 under the current maximum. Our 22 member school districts support this financially. Why should it be assumed that districts will overload classes without regulation, when we currently self-impose a limit which is less than the allowable number? The IRRC should give this anecdote as much credence as it gives to the anecdotes of advocates who predict dire consequences if the class size restrictions are eliminated.

It is time for the IRRC to fulfill its duty under the Regulatory Review Act and approve revised Chapter 14 (and the elimination of Chapter 342) as submitted by the State Board of Education.

Thank you....

IRRC

From: John Martin [periojoh@vicon.net]
Sent: Sunday, April 01, 2001 7:55 PM
To: IRRC@irrc.state.pa.us
Subject: Chapter 14 Regulations

Dear Director Robert Nyce,
The State College Area School district Board of School Directors urges you to approve the Chapter 14 Regulations as they are currently presented. These regulations allow school districts some flexibility. We work hard in State College to meet the needs of special education students by providing the support they require not by just limiting class size. The new regulations provide for services above the federal mandates and our district needs some flexibility. We do not support rigid class size limits.

We urge you to approve the Chapter 14 Regulations at your April 5, 2001 meeting.

Sincerely,
Constance C. Martin
Legislative Representative
The State College Area School District
Board of School Directors
email: Periocon@aol.com

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REVIEW COMMISSION



INTERMEDIATE UNIT I

Payette-Greene-Washington

ONE INTERMEDIATE UNIT DRIVE
COAL CENTER PA 15423-9642
TELEPHONE 724-938-3241
FAX 724-938-8722

Original: 2144

SAMUEL J. CRAIGHEAD
Executive Director

April 1, 2001

Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101**EMBARGOED MATERIAL**

Dear Mr. Nyce:

Please accept this letter as public comment regarding the proposed revisions of 22 Pa. Code Chapters 14 and 342. Given the fact that the members of the IRRC have already heard or read myriad arguments advanced to support the proposed changes of 22 Pa. Code Chapters 14 and 342, I would like to present a brief and general rationale for the commission's passing the purposed regulations as written.

Since the passage of P. L. 94-142 in 1975, there have been a series of refinements at the federal and state level to the regulatory protections afforded individuals with disabilities. These refinements have had a cumulative impact on the operations of special education programming. The positive impact has been that students with disabilities are included in educational programs where they once were not. Therefore, the current focus of special education is not on access to education, but access to a quality education.

In order for educators to make this significant transition, there needs to be relief from regulations that draw resources away from teachers refining their instructional practices (e.g., excessive paperwork, non-instructional documentation and onerous legal proceedings). One such relief is the alignment of Pennsylvania's regulations with the federal IDEA regulations. As a consequence of this alignment, educators and parents will spend less time sorting out the differences between state and federal regulations. Second, the refinements that reduce unnecessary and unproductive requirements will enable educators to redirect their efforts toward instructional quality. For example, the two-year reevaluation cycle mandates evaluation activities that often are unnecessary and contribute little to the quality of the educational programs of individuals with disabilities. The proposed three year cycle places no child in jeopardy, yet reduces the number of evaluations and related procedural activities by 33 percent.

By approving the adoption of the proposed revisions to Chapter 14, The Board of Education and the IRRC will assist educators to improve instruction in ways that will enable students to better achieve curriculum standards and reduce the undue emphasizes on procedural safeguards. I strongly urge you to approve the proposed revisions of 22 Pa. Code Chapters 14 and 342.

Sincerely,

Lawrence J. O'Shea, Ph.D.
Assistant Executive Director
INTERMEDIATE UNIT I

LJO/jlh

cf/O'Shea/Correspondence/ Nyce re/Chapter 14
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EDUCATION

#1

**Intermediate Unit 1
Special Education Services****One Intermediate Unit Drive
Coal Center, PA 15423-9642
724-938-3241
Fax 724-938-8722****MEMO: Lawrence J. O'Shea, Ph.D.
Assistant Executive Director****FAX IDENTIFICATION SHEET**

TO: Robert E. Nyce, Executive Director
Independent Regulatory Review Commission

FAX # (717)783-2664

FROM: Lawrence J. O'Shea

PHONE #: (724)938-3241, ext. 260

FAX # (724)938-8722

DATE 04/03/01

SUBJECT: Comments re: Proposed Rev. of 22 PA Code Ch 14 & 342

NUMBER OF SHEETS (including cover sheet) TWO

Hard copy will be placed in the mail today.

As per my secretary's phone call to your office, confirming my plan to be at the IRRC meeting on April 5th.

The information contained in this facsimile message is privileged and confidential information intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this fax in error, please immediately notify us by telephone.

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EDUCATION LAW CENTER

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September 18, 2000

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Janet F. Stotland
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Dr. Peter Garland
Executive Director
State Board of Education
333 Market Street
Harrisburg, PA 17126-0333

EMBARGOED MATERIAL

*Cover letter received
on 3/12 by fax
by Janet Stotland*

RE: Comments on Proposed 22 Pa. Code Chapter 14

Dear Dr. Garland:

I appreciate this opportunity to provide detailed comments regarding the above proposal.

Overview

As is discussed below, the proposed regulations remove many important protections from current state law. The proposal also offer no guidance on how local education agencies (LEAs) should implement important new federal requirements, such as including children with disabilities in statewide assessments, with necessary accommodations, or identifying alternate modes of assessment for students who cannot be so included.

The proposal does not incorporate certain important requirements from existing Basic Education Circulars, the directives that are regularly issued by the Department interpreting or commenting on state and federal legal requirements. Many Education Law Center lawsuits alleging serious violations of federal law have been settled with the issuance of a BEC. Because it is not a regulation, a BEC can be issued quickly. However, because it is not a regulation, a BEC is not "law," and some school district attorneys have advised their clients that they need not comply with BECs. Especially when a BEC is the only or the major vehicle by which the state is complying with a federal requirement, the content of the BEC must be included in these regulations.

Another big problem is the State Board's decision not to state in the regulations what the legal requirements are, but only to refer the reader to the federal regulations. The PA Department of Public Welfare has just issued proposed regulations implementing the Infants and Toddlers with Disabilities Program. Those proposed regulations quote the federal regulations, and include the PA based requirements. We urge the State Board at least to follow DPW's approach and include the applicable federal language in its entirety.

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E-mail: elc@elc-pa.org

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1901 Law & Finance Building
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Pittsburgh, PA 15219
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PA School Reform Network
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Analysis of Specific Proposed Regulations

§14.101 (definitions):

- Deletes the current definition of “appropriate program,” which is special education and related services that are “reasonably calculated to yield meaningful educational or early intervention benefits and ... progress.” This definition is a distillation of various court opinions, and does not appear in this form in the federal regulations. This regulatory definition promotes a consistent understanding of this phrase, perhaps the most important in special education law. The current definition should be retained.
- Deletes the definition of “change in placement.” This is another term which was the subject of much litigation before this definition was included in the regulations. It makes clear that a change in the child’s school site which decreases the degree of integration; which is farther from a child’s home; which disqualifies a child from special education services (including graduation); which excludes the child from school for more than 10 consecutive or 15 cumulative days, is subject to the pendency requirement.¹ That is, the change must be initiated through written notice to the parents, and, if the family objects, cannot be implemented unless ultimately sanctioned by a Hearing Officer. This definition gives families and LEAs workable guidance in a fundamental area, and should be retained.
- Narrows the definition of “eligible young child.” Under the current definition, if a child has a disability or a developmental delay that results in a need for “early intervention services,” the child is eligible to receive the needed EI service. EI services can be special education or related services. The proposed definition (the current federal definition), would mean that the child must need special education to be EI eligible. Under the current definition, if a child has a severe motor delay, and needs only PT, the child is eligible for that service. Under the proposed definition, the child would be ineligible for any services. These children should continue to be entitled to the services they need, and the current definition should be retained.

¹ That a change in a student’s IEP also triggers written notice and pendency is not in the current “change in placement” definition, but rather is in 22 Pa. Code §14.61(a)(3), entitled Notice. Since 14.61(a)(3) does not appear in the proposed regulations, we recommend not only that the change in placement regulation be retained, but that the definition be amended to make clear that a change in a student’s IEP is also a change in placement.

§14.102 and .103 (purposes and terminology related to Federal regulations): As noted above, the State Board has deliberately chosen simply to cite to the relevant federal regulations – not to include the applicable language, or, better yet, to describe the requirements in a more user-friendly manner (which is what the current regulations do). That this creates state regulations that are essentially unintelligible even to the informed reader is clear from a quick perusal of these sections. For example:

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).

There is no way in which this helps anyone, districts or families, to understand what is required. We again urge the State Board to change course, and to adopt state special education and pre-school early intervention regulations that will give families and districts clear guidance as to what the rules are. Since the promulgation of the *PARC* regulations in the 1970's, PA has always had regulations that meet this standard; this is no good reason to depart from that approach now.

§14.123 and .124 (evaluation and re-evaluation):

- 14.123(a) states that the evaluation team must include “a certified school psychologist *where appropriate*.” Since the proposed regulations delete the state’s definitions of each disability, which include the types of evaluators qualified to diagnose each condition, it is no longer clear when the inclusion of a certified school psychologist will be “appropriate.” (See also, the identical language in “reevaluation,” §14.124(a)). The regulations should either retain the current disability definitions, or otherwise give guidance on when a certified school psychologist is required.
- 14.123(b) states that the initial evaluation will be completed no later than 60 school days after the agency receives, “written parental consent.” This language also appears in the current regulations, and has led to abuses. We have received complaints that districts have delayed evaluations by not securing parental consent promptly after the evaluation has been requested. We recommend changing this language to, “no later than 60 school days from the date the request for evaluation was received from the parent.” (See §14.124(b) on “reevaluation”). An alternate

approach would be to require an LEA to request parents' written consent within 5 days of the LEA's receipt of a request for an evaluation.

- By referring only to the federal regulations, this section changes the mandatory re-evaluation period from every 2 years to every 3 (except for students with retardation governed by the *PARC* Consent Decree). We believe that this is too long a gap, and support retention of the current standard.

§14.131 (IEP): This is one of the most important issues in the proposed regulations. The proposal deletes the current requirement that the services on the IEP actually be provided to the child within 10 school days after the completion of the IEP. 22 Pa. Code §14.32(i). The federal regulation, which is incorporated by reference in the proposal, would call for the implementation of an IEP, "as soon as possible." 34 C.F.R. §300.342(b)(1)(ii). It is urgently important that families and LEAs have definite guidance on when the agreed upon services must actually be provided. A clear deadline is also required if families are to be able to obtain remedy if services are delayed. Only if state law is clear and consistent will the state's Division of Compliance be able to order corrective action in such situations. Otherwise, families will be forced to turn to the hearing process, with only a questionable chance of success in that forum.

§14.132 (ESY): This regulation refers only to "students with disabilities," and therefore does not make clear that "eligible young children," namely those with disabilities ages 3-5, are also entitled to ESY services. See, e.g., 34 C.F.R. §300.309. This could also be accomplished by making reference to ESY services in the "early intervention" section of the proposed regulations.

Second, these regulations do not include the requirements in the February 1, 1999 BEC entitled, "ESY Eligibility," the most important of which is the deadline for making annual ESY determinations. PA issued new ESY regulations in 1998 to correct certain illegal practices that had been identified by the U.S. Office of Special Education Programs and this office. At the time, this office requested that the regulations include a time deadline for making ESY determinations so that, in the case of adverse determinations, families can utilize their procedural rights before the crucial summer months. The Department refused to do so, arguing that there was no evidence that such abuses would occur in the absence of a regulatory deadline.

Following promulgation of the 1998 regulations, this office filed a number of complaints on behalf of families for whom ESY determinations had not been timely made. The Department conceded that this was a serious concern, and in, February, 1999, issued a BEC, which contains the requirement that ESY determinations be made for the most vulnerable children by the end of February. That BEC also includes direction in other problem areas. Now that the ESY regulations will be reissued, it is incumbent upon the Department to correct these omissions, and include these requirements in the regulations.

§14.133 (Behavior support): While the State Board restored a number of important protections for students with behavior problems, it continues to omit the current requirement that a behavior plan be included in the IEPs of children with "behavior problems which interfere with ...

ability to learn.” 22 Pa. Code §14.36(b). It seems obvious that, if a student with a disability has behaviors that interfere with learning (including, but not limited to situations where the child’s primary diagnosis is a “severe emotional disturbance”), the IEP should contain a plan for addressing those behaviors. This has been the law in PA for many years. Moreover, federal law will not fill the gap if this provision is deleted. Federal law only requires that there be a “behavioral intervention plan” in the disciplinary context. 34 C.F.R. §300.520. PA has wisely taken a more remedial tack, requiring a strategic approach to known problematic behaviors before serious problems have erupted.

§14.141 (Educational placement):

- *Retreat from inclusion:* The proposed regulations dramatically retreat from the current emphasis on and support for including children with disabilities in regular education programs (see, generally, 22 Pa. Code §§14.41 and 14.42; 342.41 and 342.42). In fact, it describes “special education” options only. Some of the most important deletions are: the requirements that IEP team decisions not be based on disability category, lack of alternative placements, lack of staff or space, or administrative convenience; that district must take steps to modify curriculum, testing procedures and instructional programs to support inclusion; and that a regular classroom with instructional support is the preferred educational placement for children with disabilities. 22 Pa. Code §§342.41(b), 14.41(c), and 14.42(e). These regulations should be restored.
- *Retreat from mandatory class sizes:* §14.141(2) retreats from the current state regulations, which set out mandatory class sizes for different age groups and types of disability. It is important to realize that the class size restrictions apply only to “pull out” special education programs; it is difficult to justify withdrawing a child from the regular educational setting for extra support, and then not insuring that there is a sufficiently intense teacher/student ratio for the necessary learning to take place.

The new proposal is that each district set its caseload policy, and justify to the state deviation from the state’s suggested caseloads. The only criterion is that the caseload policy, “ensure the ability of assigned staff to provide the services in each student’s IEP.” The Department can (but need not) impose caseload standards on a district. The only criteria to guide the Department are outcome indicators like graduation rates and drop outs. It is hard to imagine under what circumstances the Department could reasonably use these types of standards to invalidate a district’s caseload policy.

It is frequently argued that statewide maximums do not give districts sufficient flexibility when, for example, a student moves into the district late in the year. However, such a problem could easily be resolved without going to this extreme. District could (and I believe already can) request a child specific waiver for the remainder of the school year. The truth is that allowing larger class sizes will save money – fewer teachers, less classroom space. In fact, the Altoona Area School District, which has requested a waiver of the class size maximums under the Education Empowerment Act, has stated that the waiver will permit it not to hire 12 teachers, at a savings of

\$500,000. With a student population of roughly 9000, it is hard to imagine how such savings can be achieved without dramatic class size increases. This is a harbinger of what will occur statewide if mandatory class sizes are abandoned.

14.141(5) states that, "caseloads are not applicable to approved private schools." If this means that there are no caseload restrictions for approved schools, it is completely unacceptable (and inexplicable).

- *Retreat from "age appropriateness" standards:* 14.141(6) permits wholesale (as opposed to student specific) variations from existing age appropriateness guidelines. Those guidelines are already quite flexible – 3 years for grades K-6, and 4 years for secondary level students. There can be no educational justification for this position. Student specific variations, if recommended by the IEP team, are already permitted.

Early Intervention (EI for 3-5 year olds)

Please note our comment to the definition of "eligible young child," which would restrict the overall eligibility of children for EI services. See also §14.153(3), which incorporates this narrower definition.

§14.153 (Evaluation): See comments above regarding dating the initial evaluation from "written parental consent" rather than the date the request is received; and including a certified school psychologist in the evaluation, "as appropriate." We also object to §14.153(4)(iii), in which the mandatory timeline for re-evaluations is moved from one to two years. See, 22 Pa. Code §342.53(i). Given that this program is, at maximum, 3 years in length (assuming the family opts for keeping the child in EI for what would otherwise be the kindergarten year), most children will never be reevaluated while in this program.

§14.155 (Range of services): This continuum of possible placement options must include private regular preschools. In light of the decision in *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572 (3rd Cir. 2000), such programs must be part of the continuum if needed to insure that children are educated in the "least restrictive environment."

§14.155(d) (Duration): The regulation should include the essential provisions of the "Duration of Early Intervention Program Year" BEC dated September 1, 1997. Since Congress extended the FAPE mandate to children with disabilities in pre-school, EI programs in PA have been based on a 12 month year; this has been implemented primarily through "stretch" calendars. The 12 month construct has been resisted by some districts on the grounds that it is not regulatory. This has been an important and progressive element of PA's EI program that should be formally codified in these regulations.

§14.157 (Exit criteria): These regulations significantly retreat from the current exit criteria – from 6 months of functioning at age appropriate levels without needed services, to 4 months with appropriate EI services. Compare proposal with 22 Pa. Code §342.53(i). The original standards

should be retained.

§14.162(Procedural Safeguards):

- §14.162(c) seems to state that an early intervention agency can, through the hearing process, force the initial evaluation or initial placement of an early intervention child over the objection of the parent. The early intervention system is entirely voluntary, and no parent or child can be forced to participate. References to the early intervention system should be removed.
- §14.161(i) would change the current regulation, which permits a family to select a lawyer or a non-attorney to represent it at a Special Education hearing. The current language is drawn directly from the *PARC* Consent Decree (Amended Stipulation at ¶3(f)), a copy of which is attached. The preliminary comments to the proposed rulemaking state that the Office of the Attorney General has requested that this regulation be changed to prohibit a non-lawyer from representing a family at such a proceeding. In our opinion, no court has held that such a change is required, and, as noted above, the current language is required by the Consent Decree. I attach to these comments a memorandum that describes what we understand to be the current state of the law in this area. We urge you to retain the current language.
- §14.162(o) would deny only to the families of children ages 3-5 the right to appeal an adverse decision of a hearing officer to a Special Education Appeals Panel, requiring them instead to go directly to court. For the same reasons that the State Board determined it advisable to restore to school-aged children and their families access to appeals panels (namely, it is an relatively inexpensive and quick method of correcting erroneous Hearing Officers' determinations), this option should be available to pre-schoolers and their families.

Tracking and screening: In Act 212, 11 P.S. §875-305, the Departments of Education, Public Welfare and Health are required to develop a statewide system for, among other things, tracking at-risk children. The Department of Public Welfare is charged with insuring that the tracking system includes specifically designated categories of "at-risk" children. The children must be continually assessed, "through the age of beginners." This proposal makes no provision for carrying out these tracking requirements.

Local Interagency Coordinating Councils: Act 212, at 11 P.S. §875-104(b), requires the establishment of LICCs, which, among other things, are authorized to comment to the Department of Education on local matters. The proposal makes no provision for carrying out this requirement.

Transition: This proposal does not include the requirements either of the transition at 3 Bulletin/BEC (Early Intervention Transition: Infants and Toddlers to Preschool), or the transition at 5 BEC (Early Intervention Transition: Preschool Programs to School-Aged Programs). Both documents were developed or relied upon in settling class action lawsuits against the Department.

The “at age 3 BEC” requires MAWAs to attend transition meeting, and to provide pendency when there is a dispute about proposed changes to the child’s education. The “at age 5” BEC again requires transition planning, the participation of school districts, and provides for pendency in case of disputes. Both directives also insure the confidentiality of children’s records. The only way that the Department can insure that LEAs comply with these requirements is to include them in these regulations. Anything less is a default in the Department’s legal obligations.

Other Important Protections not in this Proposal

Mediation (22 Pa. Code §§14.65 and 342.55). The 1997 IDEA amendments required every state to operate a mediation system. PA is well ahead of the loop; SEMS was designed by a stakeholder group well over a decade ago, and has been very successful in resolving disputes. The major problem has been that families are often not aware that this option is available to them or how it works. Deleting this regulation will only make that situation worse. This is an obvious example of how referral to federal law is inadequate – federal law does not tell families how mediation works in PA. That is the job of state regulations.

Complaint management system. Federal law requires that all states operate complaint management systems with the authority and duty to investigate and resolve complaints that federal or state special education laws are being violated. In PA, this is the Division of Compliance. The procedures by which DOC conducts its investigations, and requires and enforces corrective action, should be included in new regulations. Some attorneys who represent school districts have advised their clients that, in that absence of specific regulations, they need not adhere to determinations rendered by DOC. This gap must be filled or PA will have failed in its legal duties.

Surrogate parents (22 Pa. Code §§14.66 and 342.66). These regulations delete the current regulatory references to surrogate parents. Children in foster care have an exceptionally high incidence of disabilities. However, since they often do not have birth parents to represent them in the special education and early intervention process, or even to sign necessary consents, it is very difficult to insure that these children get the services they need promptly. This is the purpose of the federal “surrogate parent” requirement. It is crucially important that these regulations explain that program, and set out the minimum conditions necessary to insure that surrogate parents are promptly available. The regulations must state that foster parents are the preferred choice as surrogate parents, and should be chosen to serve in that capacity if they meet the necessary legal requirements (*e.g.*, age and no conflict). The regulations should also require districts to maintain a pool of trained surrogate parents, and, in the absence of an available foster parent, to assign a surrogate within five (5) days of identifying a need.

Independent Educational Evaluations (22 Pa. Code §14.67): This proposal deletes the current regulations that explain how and under what circumstances families are entitled to independent educational evaluations of their children. While this information is contained in the federal regulations, it is an exceptionally important protection for children and families that should not be buried as one in a long string of citations to federal regulations.

Course completion and diplomas (22 Pa. Code §14.39): This section makes clear that the IEP team is charged with determining whether a student has satisfactorily completed a course. This section offers important guidance for this population in the areas of grading and promotion, and should be retained. This is an area where even greater clarity is needed, especially with the new federal mandate that the programs of students with disabilities, to the extent possible, be derived from the general curriculum. 22 Pa. Code §4.24(f) simply states that children who satisfactorily complete a special education program are eligible for regular high school diplomas, and does not provide any guidance on grading or promotion.

Confidentiality of Records (22 Pa. Code §342.68(d)): The proposal deletes this provision, which gives parents the right to copy their child's education records. Federal law is more restrictive. 34 C.F.R. §300.562. The more protective PA provision should be preserved.

Quality and comparability of facilities (22 Pa. Code §342.46(a) and (b)): The proposal deletes these sections which, *inter alia*, require that classrooms for children with disabilities be comparable to those for children who are not disabled; that classrooms have adequate light, ventilation and heat, and be barrier free; and that facilities be appropriate to meet the needs of the students assigned. These provisions should be retained.

Parents' right to school access: ELC staff have received complaints that parents are being denied reasonable access to visit and observe their child in class and in school activities. We are also aware of instances in which experts hired by the family to observe the child in the classroom (either as part of an independent evaluation or to prepare for a special education hearing) have not been able to carry out their observations. Reasonable school rules to maintain the integrity of the education process are, of course, appropriate. But such rules cannot be used to deny parents' the access they need to determine whether the IEP is being implemented and is succeeding, and to participate adequately in the procedural safeguard system. The revised regulations should guarantee families this access.

New 1997 IDEA requirements: Finally, although one of the major purposes of this revision is to incorporate in state law the new requirements of IDEA 1997, PA has refrained from giving regulatory guidance on such important matters as how students with disabilities are to participate in statewide assessments, and what kinds of accommodations are to be provided; how best to support the inclusion of children with disabilities in the "general curriculum"; and how to insure that students with disabilities have fair access to, and support in, public charter schools. The minimalist approach taken by the Department denies all stakeholders guidance in these and other important areas.

Thank you again for this opportunity to comment on these important proposals.

Very truly yours,



**Janet F. Stotland
Co-Director**

Enclosures

cc: Interagency Regulatory Review Commission

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PENNSYLVANIA ASSOCIATION FOR
RETARDED CHILDREN,
NANCY BETH BOWMAN, et al.

Plaintiffs

CIVIL ACTION
NO. 71-42

v.

COMMONWEALTH OF PENNSYLVANIA,
DAVID H. KURTZMAN, et al.

Defendants

AMENDED STIPULATION

AND NOW, this 14th day of February, 1972, subject to the approval and Order of the Court, it is agreed by the parties that the Stipulation of June 18, 1971, be amended to provide as follows:

1. Definitions

(a) "Change in educational status" shall mean any assignment or re-assignment based on the fact that the child is mentally retarded or thought to be mentally retarded to one of the following educational assignments: Regular Education, Special Education or to no assignment, or from one type of special education to another.

(b) "Department" shall mean the Pennsylvania Department of Education.

(c) "School District" shall mean any school district in the Commonwealth of Pennsylvania.

(d) "Intermediate Unit" shall mean the intermediate units as provided by the Pennsylvania School Code.

(e) "Regular Education" shall mean education other than special education.

(f) "Special Education" shall mean special classes, special schools, education and training secured by the local school district or intermediate unit outside the public schools or in special institutions, instruction in the home and tuition reimbursement, as provided in 24 Purd. Stat. Sec. 13-1371 through 13-1380.

(g) Wherever the word "Parent" is mentioned, it include the term "Guardian" and the plural of each where applicable.

2. No child of school age who is mentally retarded or who is thought by any school official, the intermediate unit, or by his parents or guardian to be mentally retarded, shall be subjected to a change in educational status without first being accorded notice and the opportunity of a due process hearing as hereinafter prescribed. This provision shall also apply to any child who has never had an educational assignment.

Nothing contained herein shall be construed to preclude any system of consultations or conferences with parents heretofore or hereafter used by School Districts or Intermediate Units with regard to the educational assignment of children thought to be mentally retarded. Nor shall such consultations or conferences be in lieu of the due process hearing.

3. Within 30 days of the approval of this Stipulation by the Court herein, the State Board of Education shall adopt regulations, and shall transmit copies thereof to the superintendents of the School Districts and Intermediate Units, the Members of their Boards, and their counsel, which regulations shall incorporate paragraphs 1 and 2 above and otherwise shall provide as follows:

(a) Whenever any mentally retarded or allegedly mentally retarded child of school age is recommended for a change in educational status by a School District, Intermediate Unit or any school official, notice of the proposed action shall first be given to the parent or guardian of the child.

(b) Notice of the proposed action shall be given in writing to the parent or guardian of the child either (i) at a conference with the parent or (ii) by certified mail to the parent (addressee only, return receipt requested).

(c) The notice shall describe the proposed action in detail, including specification of the statute or regulation under which such action is proposed and a clear and full statement of the reasons therefor, including specification of any tests or reports upon which such action is proposed.

(d) The notice shall advise the parent or guardian of any alternative education opportunities available to his child other than that proposed.

(e) The notice shall inform the parent or guardian of his right to contest the proposed action at a full hearing before the Secretary of Education, or his designee, in a place and at a time convenient to the parent, before the proposed action may be taken.

(f) The notice shall inform the parent or guardian of his right to be represented at the hearing by any person of his choosing, including legal counsel, of his right to examine before the hearing his child's school records including any tests or reports upon which the proposed action may be based, of his right to present evidence of his own, including expert medical, psychological and educational testimony, and of his right to call and question any school official, employee, or agent of a school district, intermediate unit or the department who may have evidence upon which the proposed action may be based.

(g) The notice shall inform the parent or guardian of the availability of various organizations, including the local chapter of the Pennsylvania Association for Retarded Children, to assist him in connection with the hearing and the school district or intermediate unit involved shall provide the address and telephone number of such organization in the notice.

(h) The notice shall inform the parent or guardian that he is entitled under the Pennsylvania Mental Health and Mental Retardation Act to the services of a local center for an independent medical, psychological and educational evaluation of his child and shall specify the name, address and telephone number of the MH-MR center in his catchment area.

(i) The notice shall specify the procedure for pursuing a hearing.

If the notice is given at a conference with the parent, the parent may at that conference indicate his satisfaction with the recommendation and may in writing waive the opportunity for a hearing or, if dissatisfied, may in writing request a hearing. In either event, the parent may within five calendar days of the conference change this decision and may then request or waive the opportunity for a hearing by so indicating in writing to the school district or intermediate unit. If the parental decision is indicated at a conference, the parent shall be given a form which shall be mailed to the school district or intermediate unit within five calendar days thereafter, if the parent desires to change the decision. There shall be no change in educational assignment during the five day period.

If notice is given by certified mail, the parent must fill in the form requesting a hearing and mail the same to the school district or intermediate unit within ten (10) days of the date of receipt of the notice.

(j) The hearing shall be scheduled not sooner than fifteen (15) days nor later than thirty (30) days after receipt of the request for a hearing from the parent or guardian, provided however that upon good cause shown, reasonable extensions of these times shall be granted at the request of the parent or guardian.

MEMORANDUM

TO: Janet Stotland
FROM: Jennifer Lowman
RE: Representation of Parents by Lay Advocates at Due Process Hearings
in Pennsylvania
DATE: August 31, 2000

I. Introduction

The Education Law Center has been contacted by several lay advocates in Pennsylvania who are concerned that a recent decision by the Supreme Court of the State of Delaware effectively prohibits them from continuing to share their expertise about navigating the special education system with parents. On July 6, 2000, the Delaware Supreme Court, in In the Matter of Marilyn Arons, et al., upheld the Delaware Board on the Unauthorized Practice of Law's determination that Marilyn Arons and another lay advocate had engaged in the unauthorized practice of law in Delaware by representing parents at special education due process hearings.

However, the Arons decision applies only in Delaware, and it addressed only ONE very specific issue - whether parents have the right under the Individuals with Disabilities Education Act (IDEA) to be represented by lay advocates at due process hearings. This decision was a "case of first impression" - meaning that the Supreme Court of Delaware is the first court in the nation to confront squarely the issue of whether the IDEA guarantees parents the right to be represented by non-lawyers at due process hearings. The Arons case was decided in the context of Delaware state law (which is different from PA's). In addition, the Arons case did NOT address whether advocates could accompany parents to IEP meetings, help parents interpret CERs, or any of the other millions of ways in which special education advocates assist parents.

The Bottom Line:

The Arons decision is not binding law in Pennsylvania. In fact, Pennsylvania has a special education regulation that allows parents to be represented by *any person* at a due process hearing, including, but not limited to, legal counsel. No Pennsylvania court has ever considered the issue of whether representation of a parent by a lay advocate at a due process hearing constitutes the unauthorized practice of law. Therefore, under the Pennsylvania special education rules, advocates in Pennsylvania should be able to make opening and closing statements at hearings, conduct direct and cross-examination of witnesses, make objections, enter evidence, etc.

II. The Arons Decision

In Arons, the Supreme Court of the State of Delaware held that the IDEA does not explicitly give parents the right to be represented by lay advocates at due process hearings.¹ The Delaware

¹The Arons decision in its entirety can be downloaded from the following web sites:
http://www.wrightslaw.com/law/caselaw/DE_arons.htm or
http://www.wrightslaw.com/law/caselaw/DE_arons.pdf

court focused solely on the language in the IDEA because Delaware's special education regulations are silent on the issue of whether parents could be represented by non-lawyers at hearings. Therefore, the Delaware Supreme Court, in the absence of clear and permissive state regulations on the matter, looked to federal law - the IDEA - to determine if parents had the right to be represented by lay advocates.

The IDEA states that any party to a due process hearing, "shall be accorded . . . the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities." 20 U.S.C. § 1415(h)(1). The Delaware Supreme Court (and the federal Court of Appeals that covers PA in another case involving Ms. Arons) concluded that this section did not authorize non-lawyers to represent parents in adversarial proceedings.

The Arons Court reasoned that Congress could have explicitly stated in the IDEA that families had the right to be represented by non-lawyers at administrative hearings, as it had in other contexts (such as in Food Stamp Act hearings), if Congress wanted to ensure that parents had the right to be represented by non-lawyers. The Court pointed out that the IDEA only states that parents have the right to be *advised* by individuals with special knowledge or training about children with disabilities, not that parents have the right to be *represented* by such individuals.

III. The Impact of the Arons Decision in Pennsylvania

The Arons Court noted that Delaware's special education regulations are silent on the issue of whether parents can be represented by non-lawyers at due process hearings. In contrast, **Pennsylvania special education regulations specifically state that "[p]arents may be represented by any person [at a due process hearing], including legal counsel."** 22 Pa. Code § 14.64(h) (emphasis added). Pennsylvania is not trying to change this language in its proposed revisions to the state special education regulations. In addition, administrative agency rules in Pennsylvania allow agencies to permit representation at a hearing by a person other than an attorney "in a specific case." See 1 Pa. Code § 31.23. Therefore, under the Pennsylvania special education *and* state agency rules, advocates in Pennsylvania should be able to make opening and closing statements at hearings, conduct direct and cross-examination of witnesses, make objections, enter evidence, etc.

The importance of the Pennsylvania regulation allowing representation of a family by "any person" at a due process hearing is highlighted in the federal Arons case. In that case, the Third Circuit Court of Appeals (the federal appeals court that covers New Jersey, Pennsylvania, Delaware, and the U.S. Virgin Islands) noted that it was perfectly permissible for New Jersey (and other states) to adopt regulations allowing for the representation of families by non-lawyers, such as Ms. Arons, at special education hearings. See Arons v. N.J. State Bd. of Educ., 842 F.2d 58 (3d Cir. 1988).² In

²In this case, Marilyn Arons argued that she had a right to receive payment of attorneys' fees since her client prevailed at a due process hearing. The Third Circuit held that she was not a lawyer, and therefore was not entitled to payment of attorneys' fees for conducting the hearing, examining witnesses, preparing oral argument, etc. However, the Third Circuit did hold that she could seek reimbursement for her time spent as an "educational consultant" in preparation for the

fact, New Jersey has a highly detailed scheme of administrative regulations that allow non-lawyers to represent parties in a variety of administrative proceedings, including special education due process hearings. See N.J. Uniform Admin. Procedural Rules §§ 1:1-5.4(a)(7) and 1:1-5.5(e) (allowing non-lawyer representatives at a due process hearing to submit evidence, speak for the party, make oral arguments, and conduct direct examination and cross-examinations of witnesses). While Pennsylvania's administrative regulations about non-lawyer legal representation are not nearly as detailed as are New Jersey's regulations, the fact that Pennsylvania's special education regulations do allow parents to be represented by "any person" at a due process hearing certainly differentiates Pennsylvania from Delaware.

Of course, there is another side to this position (nothing written by a lawyer is ever simple). Under the Pennsylvania Constitution, the Pennsylvania Supreme Court has the sole authority to "prescribe general rules . . . for admission to the bar and to practice law." Pa. Const. art. V, § 10(c). In spite of the language in the State special education regulations, the Pennsylvania Supreme Court could decide that it is within the sole province of the Court, not the State Board of Education, to determine who can and cannot "practice law" in Pennsylvania, including, but not limited to, representing a family at a special education hearing.

However, the bottom line is that no court in Pennsylvania has ever ruled on or even considered whether a special education advocate has engaged in the "unauthorized practice of law." Pennsylvania courts currently provide no specific guidance in this area.

hearing or as an "expert witness" at the hearing.



Quality & Fairness in
Pennsylvania's Public Schools

EDUCATION LAW CENTER

February 27, 2001

Ms. Deborah Morrow
Office of Special Education Programs
U.S. Department of Education
330 C Street, S.W. Switzer Building Room 3609
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CO-DIRECTORS
Janet F. Stotland
Len Rieser

RE: PA's Regulations for School-aged and Pre-School Children,
and Children with Disabilities in Charter Schools.

Dear Ms. Morrow:

In the next few weeks, you will be receiving from Pennsylvania two sets of final regulations: a substantially revised version of the regulations governing school-aged and pre-school children with disabilities (22 Pa. Code Chapter 14); and a new set of regulations governing services and programs for children with disabilities in public charter schools (22 Pa. Code Chapter 711). We believe that, in several important respects, these regulations conflict with the requirements of the Individuals with Disabilities Education Act (IDEA). Virtually all of these issues have been previously raised with the PA Department of Education, the state regulatory agencies and the state Attorney General, but we have been unable to secure remedy at that level. We write to urge you not to approve these regulations, and not to release the Part B grant monies, unless and until the necessary changes are made.

1. The standard and criteria for determining ESY eligibility for school-aged students in 22 Pa. Code §14.102 are underinclusive, in that they can be read to limit such services only to students who experience a significant regression/recoupment problem.

As you and your colleagues may recall, in 1994 OSEP found PA's ESY regulations and practices in violation of federal law. As part of the Corrective Action Plan, PA submitted, and OSEP specifically approved, the ESY regulation that has been in effect ever since. The eligibility standard in that regulation is:

An eligible student is entitled to ESY services if regression caused by interruption in educational programming and limited recoupment capacity, **or other factors**, makes it unlikely that the student will **attain** or maintain skills and behavior relevant to established IEP goals and objectives. (Emphasis added). 22 Pa. Code §14.34(b).

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The regulation then lists some "examples" of "other factors." (Full text of the regulation is Attachment A). This language was intended to make clear that a regression/recoupment difficulty is **not** the exclusive criterion for ESY eligibility.

In 22 Pa. Code §14.102(2), the new Chapter 14 does incorporate by reference the applicable federal ESY regulation, which delegates to IEP teams the decision as to whether, "ESY is necessary for the provision of FAPE to the child." 34 C.F.R. §300.309. However, the specific PA ESY regulation then improperly restricts the scope of IEP teams' ESY determinations. First, it states that "school districts" (rather than the IEP teams) shall determine ESY eligibility. 22 Pa. Code §14.132(1). And, at 22 Pa. Code §14.132(2), the PA regulation directs IEP teams to consider a limited list of "factors," all of which are all variations on regression/recoupment.

No where does the new regulation suggest that other factors not related to regression/recoupment, some of which are listed in *Johnson v. Independent School District v. Bixby*, 921 F.2d 1022 (10th Cir. 1990), could be relevant to or dispositive of a student's eligibility for ESY.¹ The solution to this problem is for PA to retain the language of the ESY regulations that was developed with, and approved by, OSEP, and especially 22 Pa. Code §14.34(a) through (c). (See Attachment A).

2. The new Chapter 14 illegally excludes pre-schoolers from ESY services.

PA has refused to include children ages 3-5 ("eligible young children") in 22 Pa. Code §14.132. According to the responsible Committee of the State Board of Education, the rationale for this exclusion is that 34 C.F.R. §300.309 states that ESY are services that are provided "beyond the normal school year of the public agency." The Committee assumed that there is no "normal school year" for pre-schoolers, and thus concluded that they are not entitled to ESY.

If it were really true that there is no school year for pre-schoolers in PA, and that the length and duration of each child's education program were set individually, the Committee would be correct. The problem is that in PA each "MAWA" (the local education agency, usually an Intermediate Unit, responsible for providing early intervention services to this population) does establish a "school year" – and not permitting a family to show that a child meets the ESY criteria and needs a longer "school year" violates federal law.

PA MAWAs must develop an annual calendar, which must be predicated on a 12 month calendar year. MAWAs are not required to operate a 365 day/year program – only to decide how many days their "year" is to be (which could be more than, **or less than**, the 180 day traditional school year), and to spread or stretch those days over a 12 month period. This is known as a "stretch calendar." Some pre-schoolers need more days of programming than is in their MAWAs' stretch calendar to receive FAPE. Such children have the same right to ESY services as older

¹ See, e.g, the list of "possible factors" in *Johnson* at 1030, n. 8.

youngsters. This can be clarified, and these rights preserved, by adding the language, "eligible young children" to 22 Pa. Code §14.132; but PA has declined to do so.

3. The new 22 Pa. Code Chapter 711 (relating to students with disabilities in public charter schools) illegally restricts these students' access to ESY programs.

The proposed regulation fails to meet the minimum federal standard set forth in the IDEA and applicable case law for ESY eligibility. The current Chapter 14 (that is, before the recent changes discussed above) requires ESY services if necessary for a student to "attain or maintain skills or behaviors. 22 Pa. Code §14.34(b). In 22 Pa. Code 711.44(2), PA deletes the words "or attain." *See also* 22 Pa. Code §711.44(8).

Deleting the phrase "or attain" restricts ESY eligibility to children who have a problem "maintaining" skills they have already acquired (*i.e.*, a "regression/recoupment" problem). The IDEA, by contrast, requires ESY whenever such services are "necessary for the provision of a free appropriate public education." 34 C.F.R. §300.309(a)(2). This broader standard encompasses not only situations involving the maintenance of existing skills, but also circumstances where the child needs services in order to *attain* skills that s/he has not yet mastered. *See Johnson v. Independent School District #4, supra*.

Finally, unlike even the new ESY regulation in Chapter 14 (relating to school-aged students), this regulation contains no reference to "other factors." This leaves the reader with an even stronger impression that regression/recoupment is the only factor entitling charter school students to ESY programs. This restrictive eligibility standard is clearly more restrictive than the federal ESY standard.

4. 22 Pa. Code Chapter 711 does not guarantee that students who are expelled from charter schools continue to receive FAPE.

22 Pa. Code § 711.61(d) is in direct conflict with the IDEA and its regulations in that it does not insure that students who are expelled continue to receive a "free appropriate public education" as guaranteed by the IDEA. 20 U.S.C. §§ 1412(a)(1)(A) states:

A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, *including children with disabilities who have been suspended or expelled from school (emphasis added)*.

See also 34 C.F.R. §300.121(a).

22 Pa. Code §711.61(d) states:

When a child with a disability has been expelled from a charter school, *the charter school shall provide the child with a disability with the education required under §12.6(e) until the charter school is notified in writing that the child is enrolled in another public agency, private school, or private agency (emphasis added)*.

Referencing the 22 Pa. Code Chapter 12 (PA's regulations governing the discipline of students

who are not disabled) is simply not enough to meet the standard set forth in the IDEA for charter school students with disabilities.

Chapter 12 permits an LEA to provide a student with "an education" that provides far less than the free appropriate public education required by the IDEA. 22 Pa. Code §§ 12.6(e)(1) does not mandate a "free appropriate public education." It states only that, "students who are less than 17 years of age are still subject to the compulsory school attendance law even though expelled, and *they must be provided an education.*" 22 Pa. Code §§ 12.6(e) (1) (emphasis added). 22 Pa. Code §12.6(e)(2) further provides that a district must only make "some provision" for an expelled student's education. *See also Abremski v. Southeastern School District*, 421 A.2d 485 (Pa. Commw. Ct. 1980)(combination of home study and weekly in-school counseling constituted adequate alternative education during an expulsion). For expelled students over the age of 17, there is no entitlement to any education.

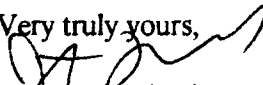
PA should be directed to revise this regulation to make it consistent with 20 U.S.C. §1412(a)(1)(A).

5. 22 Pa Code Chapter 711 does not insure that students will receive needed transportation as a related service.

Nowhere in 22 Pa. Code § 711.42 does it make clear that either the charter school or the district of residence is responsible for ensuring that appropriate transportation be provided to a child with a disability who needs transportation as a related service. As written, the regulation is inconsistent with the IDEA's provisions that guarantee a child with a disability appropriate transportation as a related service. *See* 20 U.S.C. §§ 1401 (22) (defining related services to include transportation and other services that may be required to assist a child with a disability to benefit from special education.).

Thank you for your kind attention to this matter. I would be happy to discuss it with you further if that would be of assistance.

Very truly yours,


Janet F. Stotland
Nancy A. Hubley
Education Law Center - PA

Enclosure

cc: Linda Barrett, Esq.

Pennsylvania Special Education

Chapter 14: Regulations

§14.33 Related services.

(a) The IEP team, during the development, review or revision of an IEP, shall determine whether the exceptional student needs one or more related services.

(b) The IEP team shall conclude that transportation to and from school or to and from an extracurricular activity, or a developmental, corrective or supportive service needed by an exceptional student during school hours, is a related service, if it determines that one of the following criteria has been met:

(1) The service in question is an integral part of an educational objective of the student's IEP.

(2) The service is needed to assist the student to benefit from or gain access to a special education program.

§14.34 ESY services.

(a) This section may not be construed or applied to require more than is required by Federal law and regulations, particularly the requirements of the Individuals with Disabilities Education Act (20 U.S.C.A. §§1400-1485) and its implementing regulations.

(b) An eligible student is entitled to ESY services if regression caused by interruption in educational programming and limited recoupment - capacity, or other factors, makes it unlikely that the student will attain or maintain skills and behavior relevant to established IEP goals and objectives.

(c) Examples of other factors in addition to regression and recoupment include:

(1) The extent to which the student has mastered and consolidated an important skill or behavior at the point when educational programming would be interrupted.

(2) The extent to which a skill or behavior is particularly crucial to reaching the goals of self-sufficiency and independence from caretakers.

(3) The extent to which successive interruptions in educational programming reduce a student's motivation and trust and may lead to an irreversible withdrawal from the learning process.

(d) School districts are responsible for considering the need for ESY services for each eligible student, including each student placed by the district in an approved private school or other placement site not operated by the school district.

(e) Consideration of the need for ESY services shall occur at the IEP team meeting to be convened at least annually, or more frequently if conditions warrant consistent with §14.32(1)(3) (relating to IEP). Consideration means that ESY services are raised and discussed at the IEP team meeting. In making a determination that

Chapter 342: Standards

§342.33 Related services.

See §14.33 (relating to related services).

§342.34 ESY services.

(a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

ESY services -- Extended school year services.

IEP -- Individualized Education Program.

Recoupment -- Recovery of skills or behavioral patterns, or both, specified on the IEP to a level demonstrated prior to the interruption of educational programming.

Regression -- Reversion to a lower level of functioning evidenced by a measurable decrease in the level of skills or behaviors which occurs as the result of an interruption in educational programming.

(b) Factors such as those listed in this section and §14.34 (relating to ESY services) shall be considered by IEP teams whenever relevant, but no single factor is determinative of need for ESY services.

(c) When considering the need for ESY services, the IEP team shall pay particular attention to students with disabilities that are thought of as severe (that is, students with autism/pervasive developmental disorder, serious emotional disturbance, severe levels of mental retardation, degenerative impairments with mental involvement and severe multiple disabilities) and to IEP goals that are associated with self-sufficiency and independence from caretakers. IEP teams may not limit their consideration of need for ESY services to students with particular types or degrees of disability, particular student goals, particular methods of programming provided during the regular school term, or the availability of retrospective data on regression and recoupment.

(d) ESY services shall be designed to attain or maintain skills and behaviors relevant to established IEP goals and objectives.

(e) Reliable sources of information regarding a

Pennsylvania Special Education

Chapter 14: Regulations

a student is eligible for ESY services, the IEP team shall rely on criteria in Chapter 342 (relating to special education services and programs) and applicable judicial decisions.

(f) The need for ESY services will not be based on any of the following:

1. The desire or need for day care or respite care service.
2. The desire or need for a summer recreation program.
3. 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.

§14.35 Discipline.

(a) Prior to a change in placement or revision of an IEP, the IEP team shall consider whether an eligible student might need the application of school discipline procedures and shall determine whether the actual or anticipated behavior is attributable to the student's disability.

(b) In making this determination, the IEP team shall rely on previous behavior and the likelihood of the occurrence or recurrence of behaviors requiring disciplinary action.

(c) The following disciplinary exclusions are considered a change in educational placement:

- (1) A disciplinary exclusion of an

Chapter 342: Standards

student's educational needs, propensity to progress, recoupment potential, and year-to-year progress may include the following:

1. Progress on goals in consecutive IEPs.
2. Progress reports maintained by educators, therapists and others having direct contact with the student before and after interruptions in the education program.
3. Reports by parents of negative changes in adaptive behaviors or in other skill areas.
4. Medical or other agency reports indicating degenerative-type difficulties which become exacerbated during breaks in educational services.
5. Observations and opinions by educators, parents and others.
6. Results of tests including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments and other equivalent measures.

(f) Documentation that ESY services have been considered shall be made on each eligible student's IEP. When determined to be necessary by the IEP team, ESY services shall be reflected on a student's IEP.

§342.35 Discipline.

See §14.35 (relating to discipline).

Original: 2144

IRRC

From: rosemary edwards [redwards@phila.K12.pa.us]
Sent: Friday, April 20, 2001 1:27 PM
To: IRRC@irrc.state.pa.us
Subject: Increase Class Size

Importance: High

Dear Mr. John R. McGinley

Please do not increase the class size for special education students. You must visit a class to see how the children respond to a smaller group, but increasing the number the teacher will be unable to given the extra attention.

Rosemary B. Edwards, R.N.
Sayre Middle School
215-471-3868

RECEIVED

2001 APR 20 11:45

REVIEW COMPLETED

0

Original: 2144

IRRC

From: Carol MacLean [cmaclean@mail.phila.k12.pa.us]
Sent: Friday, May 04, 2001 1:40 PM
To: IRRC@irrc.state.pa.us

John R. McGinley Jr, Chairman
Alvin Bush, Vice Chairman
Robert E. Nyce, Executive Director
Arthur Coccodrilli
Robert Harbison &
John Mizner

Gentlemen:

I am writing this email to voice my opposition to eliminating regulations (Chapter 14) that limit the number of students in special education classes.

Evidence shows that tremendous achievement gains are made when students are in small classes.

Please consider the needs of students when making your decision regarding this matter.

Sincerely,

Carol MacLean
Speech/Language Clinician
Philadelphia Public Schools

RECEIVED
2001 MAY -7 AM 9:50
IRRC@irrc.state.pa.us

Original: 2144

RECEIVED

From: John Ward [jward176@home.com]
Sent: Thursday, April 12, 2001 4:08 PM
To: IRRC@irrc.state.pa.us
Subject: To: John R McGinley

2001 APR 16 AM 6:52

IRRC
REVIEW COMMISSION



To: John R McGinley
Alvin Bush
Robert E Nyce
Arthur Coccodrilli
Robert Harbison
John Mizner

I am writing to you to ask you to support and uphold Chapter 14 and the regulations that limit class size for special education classes. The State Board of Education's plan to increase class size for Special Education students will be disastrous for those students with special needs.

Increasing class size for those students who have physical, behavioral, and cognitive disabilities is not thinking about the needs of the students involved. Also, providing waivers from caseloads will only create a greater teacher shortage. Please consider those students in Pennsylvania who have disabilities.

Thank you.

John W. Ward
215-773-0274

A proud father of a Philadelphia Special Needs Teacher and a Fulbright Teacher.

4/16/2001

Original: 2144

From: Ahmad, Angela [angela.ahmad@peco-energy.com]
Sent: Friday, April 13, 2001 11:18 AM
To: 'IRRC@irrc.state.pa.us'
Subject: SPECIAL Ed classes

To Whom it May Concern:

I'm a concerned parent who wishes to convey my dissent on increasing the class size of the special education classes throughout the state especially the Phila School District. This is self-defeating and again puts cost savings above the quality of education for our children here. Stop the short cuts and determine long term measures that will more equitably benefit both the children and the economics.

Thank You,
Angela Ahmad

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RECEIVED
2001 APR 16 AM 8:51
UTILITY
REVIEW COMMISSION

Original: 2144

From: Resa McMillan [rfmcm87@4NetSavings.com]
Sent: Thursday, April 12, 2001 12:31 PM
To: IRRC@irrc.state.pa.us
Subject: Special Education Class Size

To Whom It May Concern:

As a teacher in the School District of Philadelphia, I am writing to protest the possibility that class size regulations for special education students are in danger of being abolished. As someone who has taught in NJ and PA, I can assure you that it is imperative that class size for special education students be held to a minimum number of students taught by the maximum number of adults. The academic and social needs of special education children are vast and the current class size restrictions are maximum in terms of any kind of effective intervention educationally. Should those restrictions be lifted, special education classrooms will become unmanageable playgrounds for remedial and disturbed children. This would be a travesty to the entire concept of IDEA guidelines set down by the federal government. You must reconsider lifting class size regulations. If anything, these regulations should be amended to REDUCE class size in special education classrooms. Thank you for your consideration.

Resa McMillan
Teacher
School District of Philadelphia

RECEIVED
2001 APR 12 PM 3:59
REVIEW COMMUNITY
7

4/12/2001

Original: 2144

From: Maxine Jones [mjones184@home.com]
Sent: Thursday, April 12, 2001 10:43 PM
To: IRRC@irrc.state.pa.us
Subject: class size

Please don't increase the size of special ed classes. I have had several students receive services in small classes and have seen wonderful results. The teachers can do what we can't with 34 - 40 in our classes. That is to give these children the individual help they need and deserve. Small classes do work!!!!!!!!!!!! Maxine Jones

RECEIVED
2001 APR 16 AM 8:52
REVIEW COMMISSION

4/16/2001

Original: 2144

IRRC

From: HLWard99@aol.com
Sent: Monday, April 09, 2001 6:14 PM
To: IRRC@irrc.state.pa.us
Subject: Chapter 14

To: John R McGinley
Alvin Bush
Robert E Nyce
Arthur Coccodrilli
Robert Harbison
John Mizner

I am writing to you to ask you to support and uphold Chapter 14 and the regulations that limit class size for special education classes. The State Board of Education's plan to increase class size for Special Education students will be disastrous for those students with special needs. Increasing class size for those students who have physical, behavioral, and cognitive disabilities is not thinking about the needs of the students involved. Also, providing waivers from caseloads will only create a greater teacher shortage. Please consider those students in Pennsylvania who have disabilities. Thankyou.

Heather Ward

RECEIVED
2001 APR 10 11 3:51
REVIEW COMMISSION

4/10/2001

Original: 2144

IRRC

From: David-Heather Sand [hdsand@earthlink.net]
Sent: Monday, April 09, 2001 9:23 PM
To: IRRC@irrc.state.pa.us
Subject: A teacher's concern

Dear Sirs,

I was recently informed that the number of special needs students in a classroom may soon rise to a significant number. I wanted to voice my concern in this matter. Students who are in special need of services do much better with more individualized attention. I have seen the improvement myself! It appears to be common sense. Take this away, and I am afraid that any chance of success will diminish greatly. Please take my concern and suggestion for smaller class size in consideration. I know that I am not alone in feeling this way. Remember we want our "children achieving". Thank you very much for your time in this matter.

Sincerely,
Heather Sand

--- David-Heather Sand
--- hdsand@earthlink.net
--- EarthLink: It's your Internet.

RECEIVED
2001 APR 10 PM 6:51
REVIEW COMMISSION
40

4/10/2001

Original: 2144

IRRC

From: BEN DUDEK [miradu@earthlink.net]
Sent: Monday, April 09, 2001 5:55 PM
To: IRRC@irrc.state.pa.us
Subject: Do not increase class size for special ed

--- miradu@earthlink.net

Dear Mr. McGinley,

I am a teacher in public school in Philadelphia. I am writing to communicate my opposition to raising special ed class size.

There is an enormous amount of evidence to suggest that student achievement is related to smaller class size. To increase the class size of those students who have physical, behavioral, learning and cognitive disabilities seems truly illogical and not in the best interest of students. Thank you.

Sincerely,
Delia Mirarchi

RECEIVED
2001 APR 10 AM 8:51
TERRY
REVIEW COMMISSION

4/10/2001

IRRC

Original: 2144

From: SWW1217@aol.com
Sent: Sunday, April 08, 2001 10:04 PM
To: IRRC@irrc.state.pa.us
Subject: increase is special education class size

Dear Mr. McGinley,
I am writing to express my concern regarding the proposed increase in special education class size. As a early balanced literacy intern teacher (2nd yr), I have experienced, first hand, the benefits of smaller class size. I believe this would be especially true of special education classes where the students are in an even greater need of individualized instruction and support. I implore you to rethink this proposal.
Thank you for attention.
Sydney L. Warren, School District of Philadelphia
sww1217@aol.com

RECEIVED
2001 APR -9 AM 8:43
EDUCATION
REVIEW COMMISSION
STORY

4/9/2001

Original: 2144

IRRC

From: Marlowenh@aol.com
Sent: Sunday, April 08, 2001 7:52 AM
To: IRRC@irrc.state.pa.us
Subject: Special Ed. Class Size Reduction

To: John R. McGinley, Jr. Chairman, Alvin Bush, Vice Chairman, Robert E. Nyce, Executive Director, Arthur Coccodrilli, Robert Harbison and John Mizner;

Gentlemen:

I write this letter to beg you NOT TO INCREASE CLASS SIZE IN SPECIAL EDUCATION CLASSES. As a teacher in the Philadelphia schools in 1st grade and a small community coordinator for 7th and 8th grade as well as two special education classes, I have seen wonderful improvement and progress in these small classes. The students have fabulous individualized teaching, time beyond class time is always given and many of these students have moved onto high school.

Allow these dedicated and caring teachers to continue their fine teaching-remember, if just one child is successful, then we have done our job-here you have a series of successes but if you increase class size in these delicate classes YOU WILL BE RESPONSIBLE FOR FAILURE with these children!

Maxine L. Marlowe

RECEIVED
2001 APR -9 AM 8:43
...AFF...
REVIEW COMMISSION
TORY
1

Original: 2144

IRRC

From: Sandy Kampf [skampf@home.com]
Sent: Monday, April 09, 2001 8:16 PM
To: IRRC@irrc.state.pa.us
Subject: Chapter 14

John R. McGinley Jr, Chairman
Alvin Bush, Vice Chairman
Robert E. Nyce, Executive Director
Arthur Coccodrilli
Robert Harbison &
John Mizner

Why would you eliminate the regulation to limit the number of students in special education classes?
These students need more attention not less!

How do you expect these students to achieve with less assistance?

All evidence show that student achievement increases with smaller class sizes, how can you sacrifice these students to save money? or Is this another way to push charter schools?

Sandra Kampf

RECEIVED
2001 APR 10 AM 8:51
REVIEW COMMITTEE

4/10/2001

Original: 2144

IRRC

From: Christy Buleza [cbuleza@bellatlantic.net]
Sent: Saturday, April 07, 2001 6:08 PM
To: IRRC@irrc.state.pa.us
Subject: raising class size in special ed

Please do not do a disservice to the children by raising class size in special ed. I understand that many schools would not be in compliance if a class went over by one student. However, as a Phila school teacher, I can see this being abused. The kids who are in special ed in Phila are the lowest of the low and need even smaller class sizes. Thank you.
Christy Buleza

RECEIVED

2001 APR -9 AM 8:44

REVIEW COMMISSION

Original: 2144

IRRC

From: Philip Zuchman [zuchmanstudios@hotmail.com]
Sent: Saturday, April 07, 2001 3:16 PM
To: IRRC@irrc.state.pa.us
Subject: Special Ed

As a teacher in the Philadelphia School System for over 30 years, the one thing that works to reach kids and really help them get a sound education is smaller classes. How could you possibly consider not having a limit on class size, especially in special ed? The teachers are already overloaded and overworked with paper work and IEPs, not to mention the time they need with the children. What do you stand for anyway? Money is not the answer; education is! Please consider the children first.

Deborah Gross-Zuchman
Art Demonstration Teacher

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RECEIVED

2001 APR -9 AM 8:46

REVIEW COMMISSION



Original: 2144

IRRC

From: Carole J. Rozycki [crozycki@home.com]
Sent: Saturday, April 07, 2001 10:48 AM
To: IRRC@irrc.state.pa.us
Subject: <no subject>

If you have ever had the pleasure of working with a group of special education students who are slow learners or socially or emotionally disturbed you know how much attention they individually need. If indeed it is thought that class size is not an issue I would like to recommend that that is a mistake. I am an esol teacher in Philadelphia where I sometimes have had from one to four special ed students. I have also covered classes with ten to fifteen students. These kids (high school) are very needy and very demanding of the teacher's attention. Their group or social skills often require constant attention. Class size is a legitimate issue in deciding how to meet their educational needs. Please consider this before changing state requirements.

Most sincerely,
Carole J. Rozycki
teacher of esol
Frankford High School
Philadelphia, PA 19124

RECEIVED
2001 APR -9 AM 8:46
REV. L. COLLINS
41

Original: 2144

IRRC

From: Punim316@aol.com
Sent: Saturday, April 07, 2001 11:42 AM
To: IRRC@irrc.state.pa.us
Cc: sensei@voicenet.com
Subject: Special Education Class Size

I am a school counselor with the School District of Philadelphia. I implore you not to increase class size but rather limit the class size to no more than 12. I have personally witnessed the results of an oversized special education class and the results are horrible. We have enough difficulty attracting and maintaining special education teachers at present. Children learn best under optimal conditions. Thank you for your support.

RECEIVED
2001 APR -9 AM 8:46
IRRC
REVIEW COMMISSION
18

4/9/2001

Original: 2144

IRRC

From: Carol Blair [classystuff@hotmail.com]
Sent: Saturday, April 07, 2001 7:11 PM
To: IRRC@irrc.state.pa.us
Subject: Special class size

You can only hurt children with specila need by raising class size. These students need extra help and they will not get what they need in a larger sized class.

Get your FREE download of MSN Explorer at <http://explorer.msn.com>

RECEIVED
2001 APR -9 AM 8:44
STORY
REVIEW COMMISSION

Original: 2144

IRRC

From: Mjw54mel@netscape.net
Sent: Friday, April 06, 2001 9:36 AM
To: IRRC@irrc.state.pa.us
Subject: Increase class size

Mr. McGinley Jr., Chairman

How could you even think of increasing class size for our special kids?
Regular kids in the classroom don't get enough attention due to class
size. You people are so removed from the real teaching world. WE ARE
DEALING WITH HUMAN BEINGS HERE!!!!!!!!!!

MEL WILLIAMS

Get your own FREE, personal Netscape Webmail account today at
<http://webmail.netscape.com/>

RECEIVED
APR 6 9 54 AM '01
STATE OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
HARRISBURG, PA

IRRC

From: bensdad [bensdad@earthlink.net]
Sent: Friday, April 06, 2001 5:52 PM
To: IRRC@irrc.state.pa.us
Subject: special education class sizes

The thought that our state may even be considering increasing the class numbers in the area of special education is cause for great concern to me. The term "special education" is there for a reason, gentlemen! It means that regular education class sizes and activities don't meet the needs of our special needs students. They flourish in an environment that is specially designed for their needs: more individual attention, fewer students to interact with, less movement and distractions. All these conditions make up a successful special education environment - don't sell it down the tubes for the almighty tax dollar! Stand for something good for a change! Stand for children who don't have a say in their own futures and who depend on YOU to make the right choices for them. I am disgusted and tired of education always taking a back seat in our state. I'm enraged every time someone says that we spend too much on education and that there are other priorities to think about. Children are our main priority, gentlemen - they are our greatest asset - they are our future - they are the ones who will take over the running of our cities, governments, colleges. Pull education up to the standards you hold for other important issues. Make it the most important issue on the table BECAUSE IT IS!!!

Connie Siewert
Wynnewood, PA

RECEIVED

2001 APR -9 AM 6:44

REVENUE COMMISSION

DE

Original: 2144
IRRC

From: Karen Schoenewaldt [schoenewaldt@juno.com]
Sent: Friday, April 06, 2001 12:40 AM
To: IRRC@irrc.state.pa.us
Subject: special education

Mr. John R. McGinley, Jr
Chairman
PA Independent Regulatory Review Commission

Dear Mr. McGinley:

I understand that the IRRC is considering a measure that would allow an increase in the class size of special education classes in this state. I implore you not to support such an action. This is, surely, one part of the state's education program, that needs our full support. I appreciate your time and attention to this issue.

Sincerely,

Karen Schoenewaldt

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2001 APR -6 PM 0:55
IRRC@IRRC.STATE.PA.US
JUNO



PENNSYLVANIA FEDERATION OF TEACHERS, AFT, AFL-CIO

10 SOUTH NINETEENTH STREET AT THE RIVER • PITTSBURGH, PA 15203-1842 • Phone (412) 431-5900 • Fax (412) 390-2491

Albert Fondy, President

Ted Kirsch, Executive Vice President

Friday, April 6, 2001

Mr. Arthur Coccodrilli
c/o Independent Regulatory
Review Commission
Department of Education
333 Market Street, 14th Floor
Harrisburg, PA 17126

Dear Mr. Coccodrilli:

I want to thank you for your splendid exposition of what I would call the lack of sense or sanity in the newly-adopted Chapter 14 Regulations. I think everyone in the room, even those in favor of the New Chapter 14, knew that you were correct. The Board representatives answered none of your questions adequately.

I also want to thank you again for your vote to oppose their adoption. You are obviously a person of integrity as well as being an eloquent advocate for what you believe.

Thank you once again.

Sincerely,

Paul E. Francis, Chairman
PaFT Special Education Committee and
Vice President,
Pittsburgh Federation of Teachers

PEF:pjtopeiu457afl-cio

cc: Mr. Albert Fondy, PaFT President
Mr. Patsy Tallarico, PSEA President
Ms. Liz Stanley Swope, PSEA

IRRC

From: Emk5125@aol.com
Sent: Friday, April 06, 2001 11:30 PM
To: IRRC@irrc.state.pa.us
Subject: re:increasing class size in special ed.

I would like to strongly voice my opposition to the proposal to increase special ed class sizes. This goes against every piece of research proving how beneficial these small classes are to all our struggling children. It is an act of total disregard for these students, their families, teachers, and school districts. I would beg you to consider how important these children are to our future and not put impediments in the path of their struggles for success! E. Kerr

RECEIVED
2001 APR -9 AM 8:44
REVIEW COMMISSION
1037

4/9/2001

Original: 2144
Cynthia C. Paul
3425 Maple Drive
South Park, PA 15129
(724)348-6237

RECEIVED
2001 APR -6 PM 9:14
INDEPENDENT REGULATORY
REVIEW COMMISSION



Mr. John McGinley, Jr.
Independent Regulatory Review Commission
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126

Dear Mr. McGinley:

How would you like to have a child diagnosed with Attention Deficit Disorder, Manic Depression, Mentally Retarded, stuttering, and needing occupational therapy all in one class. I have news for you. That is just ONE child that our special education teacher is dealing with in her classroom of 15 students this year alone. While this child has been in her care, his medication has been adjusted and changed at least 5 times since January. Now, let's warehouse another 20-30 students to this class and you have created complete and utter chaos!

With no class size standards approved by the Ridge administration, the state has committed an unconscionable disservice to our very own children. With the financial constraints that school districts are currently working with, they will certainly continue to increase the class size as well as the types of disabilities in one classroom. No one teacher can help all of the problem children in that room.

Research has documented that students that we don't help now will be the the same students who will require jails, extensive mental health services, and government assistance in their adult years. Can we really afford to treat Pennsylvania's children in this manner?

As both a regular educator and a special educator and taxpayer, I am appalled at the regulations as they stand. Won't you stand up for our children?

Please reply.

Respectfully yours,

Cynthia C. Paul
Cynthia C. Paul

Original: 2144

IRRC

From: JulieGberg@aol.com
Sent: Friday, April 06, 2001 8:10 PM
To: IRRC@irrc.state.pa.us
Subject: special ed

Dear John R. McGinley, Jr. and Colleagues,

I understand that the number of students in special education classes is under consideration. As a religious leader and educator I am aware of the relationship between small class size and educational achievement. It is clear that children who already have special needs are all the more in jeopardy when lost in the crowd of a large class. Please stand firm against the increase in class size that is being suggested.

Greenberg	Sincerely, Rabbi Julie
St. B202	6445 Greene
19119	Phila. Pa

RECEIVED
2001 APR -9 AM 8:44
NEW YORK
NEW YORK COMMISSION

4/9/2001

Original: 2144

IRRC

From: Ruth Anthony-Gardner [ruthanthonygardner@yahoo.com]
Sent: Friday, April 06, 2001 7:02 PM
To: IRRC@irrc.state.pa.us
Subject: Don't increase Special Education class size!

ATTENTION:

John R. McGinley Jr, Chairman
Alvin Bush, Vice Chairman
Robert E. Nyce, Executive Director
Arthur Coccodrilli
Robert Harbison &
John Mizner

I am appalled at the idea of eliminating the regulations which limit the number of students in special education classes. With all the evidence showing tremendous achievement gains for students in small classes, why would anyone increase class size - especially for students with serious physical, behavioral and cognitive disabilities? We believe cost

cutting - not the educational needs of students - is driving the state Board of Education's plan.

Sincerely,
Ruth Anthony-Gardner

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<http://personal.mail.yahoo.com/>

RECEIVED
2001 APR -9 AM 8:44
REVIEW COMMUNICATION
110637
10

Original: 2144
IRRC

From: shirley scott [shirleywash@yahoo.com]
Sent: Thursday, April 05, 2001 7:19 PM
To: IRRC@irrc.state.pa.us
Subject: class size in special education

I am writing to object to the proposal to increase class size, especially in special education classes. Students with special needs will not receive the individualized attention and education which special education provide. Furthermore, it will add increased workload on the teacher in writing and implementing IEP's.

Do You Yahoo!?
Get email at your own domain with Yahoo! Mail.
<http://personal.mail.yahoo.com/>

2001 APR -6 PM 6:52
RECEIVED
10

Original: 2144

IRRC

From: Robin Zatuchni [rzatuchni@hotmail.com]
Sent: Thursday, April 05, 2001 9:00 PM
To: IRRC@irrc.state.pa.us
Subject: Class Size

to whom it may concern,

As a parent of a special needs child I am writing to tell you not to increase the size to student in a class. If this was to happen it would be desasterous for my daughter and for the other very needy students. My daughter has multi handicaps and needs constant supervision that a small teacher -pupil ratio allows. You may want to consider the fact that you may be paying a little more for her education but in the long run she maybe able to become a productive member of society rather than a burden that collects from the state for the rest of her life. TRou may pay now or you can pay later. Thank You Robin Zatuchni

Get your FREE download of MSN Explorer at <http://explorer.msn.com>

2001 APR -6 PM 0:55
IRRC@IRRC.STATE.PA.US
10

Original: 2144



ROSE TREE MEDIA SCHOOL DISTRICT

308 N. Olive Street, Media, PA 19063-2403

Phone: 610-627-6000 O Fax: 610-891-0959

Web Site Address: www.rosetree.k12.pa.us

Laird P. Warner, Ed.D.
Superintendent

April 5, 2001

Mr. John R. McGinley, Jr., Chair
Independent Regulatory Review Commission
Harristown Two, 14th Floor
333 Market Street
Harrisburg, PA 17101

Dear Mr. McGinley:

The Rose Tree Media School District would like to share its position with you regarding the State Board of Education's proposed Special Education Regulations and, specifically, the caseload chart.

The Rose Tree Media School District supports the State Board of Education's proposed Special Education Regulations, Chapter 14. The proposed §14.142 Caseload for special education eliminates the "parenthetical numbers" which state the maximum number of students who may be in the classroom at one time. We do not believe the elimination of the class size/parenthetical numbers will have a negative impact on programs for students. We support elimination of the "parenthetical" class size numbers.

The proposal would enable school districts to request approval for a caseload chart which varies from the regulations. There appear to be appropriate safeguards within the proposal to prevent abuse. In addition, the extensive procedural safeguards and complaint process provide safeguards to parents and students. This proposed change is positive and will provide the flexibility needed to operate local programs in an effective manner. We support this proposal.

It is time to move forward and adopt these regulations and devote our energy to services and programs for our students. We encourage you to approve the proposed Chapter 14. Please contact me at once if you would like additional information.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Laird P. Warner', written over a horizontal line.

Laird P. Warner, Ed.D.
Superintendent of Schools

:adm

C: Board of Education
Dr. Todd Fay
Dr. Patricia Barta

RECEIVED
2001 APR 12 AM 9:34
INDEPENDENT
REGULATORY
REVIEW COMMISSION

Original: 2144

IRRC

From: ts2@dca.net
Sent: Thursday, April 05, 2001 6:58 PM
To: IRRC@irrc.state.pa.us
Subject: Increasing class size for special needs students

Mr. McGinley,

I am a teacher and small learning community coordinator at University City High School in Philadelphia. I am writing to voice my opposition to any increase in class size for special needs classes. Our special needs students need every advantage possible. Serving their needs dictates the maintenance of or reduction in class size, not an increase.

Sincerely,
Theresa E. Simmonds
215.465.0529

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2001 APR -6 AM 8:52
REVIEW COMMISSION
40

ORIGINAL FAXED IN ON 4/2/01

ORIGINAL: 2144

CENTRAL
SUSQUEHANNA
INTERMEDIATE
UNIT

P.O. Box 213
Lewisburg, PA 17837
570-523-1155
FAX 570-524-7104
www.csiu-pa.org

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2001 APR -5 AM 8:34
INDEPENDENT REGULATORY
REVIEW COMMISSION



ENRICHING
LEARNING ...
ENRICHING
LIVES

April 2, 2001

Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Dear Mr. Nyce:

I am writing to express my support of the resubmission of Chapter 14 by the State Board of Education to the Independent Regulatory Review Commission (IRRC). During the past several weeks I had numerous discussions with my colleagues in intermediate units and school districts with widespread support of the proposal. Adopting IDEA by reference along with other state requirements in special education makes sense.

On March 8, 2001 the Independent Regulatory Review Commission expressed concerns with the elimination of the class size requirements as part of their rationale for disapproval. However, in my experiences working with administrators in school districts and the Pennsylvania Department of Education there are sufficient safeguards in place to ensure the delivery of appropriate special education services without further restrictions imposed by a class size chart

The proposed regulations have been thoughtfully developed by the State Board of Education with sufficient time for public comment and input. Therefore, I respectfully request the Independent Regulatory Review Commission to approve the revised Chapter 14 and the elimination of Chapter 342 as submitted by the State Board of Education.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bob Witten', is written over a horizontal line.

Robert G. Witten, Ph. D.
Executive Director

Original: 2144

IRRC

From: James Salom [jsalom@earthlink.net]
Sent: Thursday, April 05, 2001 3:09 PM
To: IRRC@irrc.state.pa.us
Subject: class size!!!!

As a special education teacher I am appauled at the idea of unlimited class size. It is difficult enough with the limit set into place to provide effective education by meeting the needs of all of the students. The people who make the laws are not the ones in the classrooms trying to teach children with "special" needs and have no idea what struggles and challenges teachers face every day. I challenge them to go into a classroom for a week and try teaching and then go back and make laws. They are so out of touch with what really goes on. Not only is it unfair to the teachers it is totally unfair to the students who need individual instruction and assistance on a daily basis. I urge you not to pass this law, in fact class size should be lowered not made unlimited and think of the needs of our "special " students by giving them a fair chance to succeed in life by getting the education that they deserve. Ellen Salom

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2001 APR -5 PM 1:22

REVIEW COMMISSION

1

IRRC

From: Mindy Rosen [mirosen@phila.k12.pa.us]
Sent: Thursday, April 05, 2001 2:17 PM
To: IRRC@irrc.state.pa.us
Subject: Special Educaation Class size

Attn: John R. McGinley - Chairman
Alvin Bush - Vice Chairman
Robert E. Nyce - Executive Director
Arthur Coccodrilli
Robert Harbison
John Mizner

I am writing to you regarding class size. I recently received an e-mail stating that class size in classrooms will soon be increasing. This includes special education classes. As a teacher in a learning support classroom; this worries me. The reason my students are in my classroom is because they can not function in a large classroom setting. They need individualized attention, shorter work times and less distractions. By increasing class size you will slow down they progress these students are making. As a teacher I struggle every day to teach 10 kids in 10 different ways who are on 10 different levels. If you increase the number of students in a class there is no way these children would receive the intervention they need to acheive or the attention they demand. I am already going in circles on some days, these possible changes would send me into a full spin. Please reconsider your decision for the sake of the children (and teachers).

Sincerely,
Mrs. Mindy Rosen
Special Education Teacher
Clara Barton Elementary School

Mindy Rosen
Clara Barton School
School District of Philadelphia
4600 Rosehill Street
Phila., PA 19120
office 215-456-3007
fax 215-456-5578

RECEIVED
APR 5 11 03 AM '01
IRRC

Original: 2144

IRRC

From: Pedro A Rivera [privera@phila.k12.pa.us]
Sent: Thursday, April 05, 2001 11:44 AM
To: IRRC@irrc.state.pa.us
Subject: <no subject>

I am voting citizen in Philadelphia and am firmly opposed to the elimination of special education class size. Teachers need smaller class sizes in order to provide all our children a quality education. By taking this much needed and proven resource away you are dooming our children to fail in an already difficult environment. If this legislation passes I will definitely vote against any representative who voted in favor of it, whether they be Democrat or republican. I will also strongly and aggressively urge all of my family , friends and even acquaintances to do the same.

Sincerely,
Pedro Rivera

RECEIVED

2001 APR -5 11:12:03

REVIEW COMMUNICATION

1

Original: 2144

IRRC

From: melissa1101 [melissa1101@email.msn.com]
Sent: Thursday, April 05, 2001 10:38 PM
To: IRRC@irrc.state.pa.us
Subject: raising the size of special education classes

John McGinley Jr., Chairman
Alvin Bush, Vice Chairman
Robert E. Nyce, Executive Director
Arthur Coccodrilli:

I am a first grade teacher and know the importance of small class size in a regular classroom. Do not raise class size in special education classes. Children in special education are in special education because they need extra attention and help from a teacher. It would be a terrible shame to raise class size for these children. All class size should be reduced to less than 20 students if you really want to see students succeed.

2001 APR -6 11 09:59
IRRC@IRRC.STATE.PA.US
1101

4/6/2001

IRRC Original: 2144

From: Dori McClennen [dorilyn@bellatlantic.net]
Sent: Thursday, April 05, 2001 10:46 AM
To: IRRC@irrc.state.pa.us
Subject: class size

Reality?????????? Where exactly do you stand in regards to reality? Anyone with both feet on the ground in Philadelphia's schools knows that class size needs to be decreased, not increased. Cut costs now in schools and be prepared to spend the money later in your prison system.

Dori McClennen, teacher

201 APR -5 11:15:03
REVIEW COLLECTION
41

4/5/2001

IRRC

From: DONNA KOENIG [DMKOENIG@email.msn.com]
Sent: Thursday, April 05, 2001 12:18 AM
To: Undisclosed-Recipient;;
Subject: Fw: Do not increase the size of special education classes

Here is a copy of the e-mail that I sent to the State Board of Education. Maybe you could just copy it, and delete my name? Put your own name in the place of my name?? Thanks ,and please send the notice to other teachers, and PFT members. Donna----- Original Message -----

From: DONNA KOENIG
To: irrc@irrc.state.pa.us
Sent: Thursday, April 05, 2001 12:13 AM
Subject: Do not increase the size of special education classes

Donna Marie Koenig
2837 Gilham Street
Philadelphia, PA 19149
dmkoenig@msn.com

John R. McGinley Jr.
Alvin Bush
Robert E. Nyce
Arthur Coccodrilli
Robert Harbison
John Mizner

Dear Sirs:

I am a teacher in the Philadelphia Public Schools. It has been brought to my attention that the State Board of Education is trying to eliminate regulations that limit the number of students in special education classes. All classes should be small to ensure the optimal amount of attention from the teacher, but I believe that smaller classes for children with special needs is a MUST!!! I urge you to do everything in your power to oppose this proposal. Passage of this would be disastrous for the children who need special attention the most. Thank you for your help in this matter.

Sincerely yours,

Donna M. Koenig

Original; 2144

**PUBLIC COMMENT ON CHAPTER 14
SPECIAL EDUCATION REGULATIONS**

**Presented to the Independent
Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101**

**William Grochowski
Scranton School District
April 5, 2001**

RECEIVED
2001 APR -3 AM 8:49
REGULATORY REVIEW COMMISSION
10

PUBLIC COMMENT TO THE INDEPENDENT REGULATORY REVIEW COMMISSION
ON April 5, 2001

Good Morning. My name is William Grochowski. I am Supervisor of Special Education and Pupil Personnel Services in the Scranton School District. I have been involved in Special Education for 34 years - 25 as an administrator. On behalf of the district I would like to express our appreciation for the opportunity to offer public comment on the Chapter 14 Regulations for Special Education. The concept of incorporating IDEA '97 by reference with PA specific provisions along with the additional revisions already included by the State Board is strongly supported by the Scranton School District.

Over the years Pennsylvania has developed an exemplary system of advocacy which includes extensive parent involvement. Examples of this advocacy are evident in early intervention, parent training programs, advisory councils, the MH/MR system, brochures, pamphlets, telephone hot lines, a liberal complaint procedure through the State Special Education Department and numerous other disability organizations. IDEA '97 was carefully drafted with input from the leading organization in the country for disabled students, the Council for Exceptional Children. This agency along with parents, agencies and legislators drafted this legislation with the best interest of children in mind. Pennsylvania has used IDEA '97 as a base and has added many additional safeguards which insure services. In addition, a 16 Page Procedural Safeguards Notice is presented to parents on at least 3 different occasions every year which include the name, address, and phone number of the

MH/MR office, ARC, Local Task Force on the Right to Education and free legal advice through the PA Bar Association and the Education Law Center. To further insure compliance, parents can request unlimited IEP meetings and Due Process Hearings with extensive judicial precedents as a backdrop. Currently, the body of case law established in District Court, the 3rd Circuit, and the Supreme Court have set a precedent which must be followed.

Surely with this system in place the safeguards and entitlement that special education enjoy are not threatened in any way. We are of the firm opinion that the regulations as passed by the State Board protect the rights of children with disabilities and provide administrators the freedom to utilize its energy and resources on program development. At the present time far too much effort is devoted to procedural matters, paperwork, and technicalities which have little or no impact on the instructional process.

In closing, the Scranton School District would request that you approve the Chapter 14 regulations as submitted by the State Board of Education. The current Chapter 14 Regulations have undergone intensive review and scrutiny over a long period of time with input from all interested parties. We thank you for consideration of our views and hope you pass Chapter 14 in its current form.

IRRC

From: Dmgdnshty@aol.com
Sent: Thursday, April 05, 2001 3:21 PM
To: IRRC@irrc.state.pa.us
Cc: sensei@voicenet.com
Subject: Increase in Special Ed. class size

Please forward to the attention of:

John R. McGinley Jr, Chairman
Alvin Bush, Vice Chairman
Robert E. Nyce, Executive Director
Arthur Coccodrilli
Robert Harbison &
John Mizner

Dear Sirs:

I would like to bring an issue to your attention that is very distressing to me.

The State Board of Education is trying to eliminate the regulations (Chapter 14)

that limit the number of students in special education classes. With all the evidence showing tremendous achievement gains for students in small classes, why would anyone increase class size - especially for students with serious physical, behavioral and cognitive disabilities? I believe cost cutting - not the educational needs of students - is driving the state Board of Education's plan. The state Board of Education's plan to increase class size for

special education students and to provide waivers from caseloads will be disastrous for students with special needs. Protect our students and our classrooms.

Please do not allow this to happen. I thank you, in advance, for your attention to this matter.

Sincerely,

Deborah M. Gordon
3927 Dartmouth Place
Philadelphia, PA 19136

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2001 APR -5 PM 4:22
1

4/5/2001

Original: 2144

IRRC

From: Gurugila@aol.com
Sent: Thursday, April 05, 2001 5:46 PM
To: IRRC@irrc.state.pa.us
Subject: Fwd: Fw: Do not increase the size of special education classes

Wendy M. Goldberg 1050 Hillview Turn Huntingdon Valley, PA 19006 gurugila@aol.com John R. McGinley Jr. Alvin Bush Robert E. Nyce Arthur Coccodrilli Robert Harbison John Mizner Dear Sirs: I am a teacher in the Philadelphia Public Schools. It has been brought to my attention that the State Board of Education is trying to eliminate regulations that limit the number of students in special education classes. All classes should be small to ensure the optimal amount of attention from the teacher, but I believe that smaller classes for children with special needs is a MUST!!! I urge you to do everything in your power to oppose this proposal. Passage of this would be disastrous for the children who need special attention the most. Thank you for your help in this matter. Sincerely, Wendy M. Goldberg >>

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4/6/2001