Original 2144

ATTORNEYS

SWEET ▪ STEVENS
TUCKER & KATZ LLP

PRACTICE LIMITED TO EDUCATION AND EMPLOYMENT LAW

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OF COUNSEL
ROSEMARY E. MULLALY

September 14, 2000

RECEIVED
SEP 2 [illegible]
PA. [illegible]
OF [illegible]

To: Dr. Peter H. Garland
Executive Director
State Board of Education
333 Market Street
Harrisburg, PA 17126-0333

WRITTEN PUBLIC COMMENTS REGARDING PROPOSED REGULATIONS ON SPECIAL EDUCATION SERVICES AND PROGRAMS OF SWEET, STEVENS, TUCKER & KATZ LLP

Sweet, Stevens, Tucker & Katz LLP is a New Britain based Pennsylvania law firm that limits its practice to Education and Employment Law. Our clients have included over 250 school entities during a span of more than 25 years.

Attorneys of the firm have been involved, on behalf of school districts, intermediate units, or technical schools, in a significant number of the key cases that have been decided in Pennsylvania in the area of Special Education, beginning with the enactment of Public Law 94-142 and continuing with the adoption of the IDEA Amendments of 1997.

The purpose of our comments to the proposed regulations is to express concern about some areas of the proposals that we believe will either, if left unchanged, result in unnecessary litigation, are contrary to existing law, or, which appear to exceed Federal requirements. Our comments follow:

1. The words "quality" and "to reach their potential" should be deleted from § 14.102

Section 14.102 of the proposal, like the predecessor regulations, suggests that the Commonwealth is committed to insuring that *quality* programs will be provided, and that an aspiration is that students will *reach their potential.*

We suggest that the word *appropriate* should be substituted for *quality* in § 14.102 (a) and that the words *to meet their needs* should be substituted for *to reach their potential* in § 14.102 (a)(3).

Our concern is based upon the fact that the Federal Judiciary has routinely held that where a state adopts a higher standard than that which is required by the IDEA, the state's requirement controls. An example of this theory in action can be found in the recent decision of the United States District Court for the Eastern District of Pennsylvania in *John T. v. Delaware County Intermediate Unit,* Civil Action No. 98-5781, holding that Pennsylvania statutes impose a higher duty than the IDEA relative to private school children.

Both Federal and State law have consistently held that a student is not entitled to receive a program that maximizes potential. *See, Board of Education v. Rowley,* 458 U.S. 176 (1982); *Lisa H. v. State Board of Education,* 67 Pa. Commonwealth Ct. 350 (1982). Instead, the standard is that an appropriate program that meets the student's individual needs is what is due. Pennsylvania Courts have also held that there is no right to a particular *quality* or level of education. *See, Shanberg v. Commonwealth of Pa.,* 57 Pa Commonwealth Ct. 38 (1981).

Our concern is that, in view of *John T.* and its progeny, advocates will point to this language as a vehicle for overturning established Pennsylvania law.

2. **No justification exists for continuing separate rules for mentally retarded students.**

Pennsylvania has always provided different rules for students who are mentally retarded as a result of the PARC consent decree. The proposed regulations, at § 14.124 (c) and at § 14.143 (b), propose to continue that tradition.

However, when Public Law 94-142 was adopted, Congress stated that it was its intention to incorporate the concepts contained in the PARC consent decree and the case of *D.C. v. Mills* into the Federal law. Under standard rules of statutory construction, when Congress overrules or incorporates a Court decision, the new statute becomes the law. For example, in the area of attorneys' fees, the Handicapped Children's Protection Act overturned the case of *Smith v. Robinson.*. Pennsylvania has no more right nor reason to follow that decision in it regulations than it does to follow PARC. If the purpose of the proposed regulations is to line them up with Federal law, then this needlessly confusing exception should be eliminated, consistent with Federal law.

3. **Section 14.142 relating to class sizes should be eliminated.**

The proposed regulations, under § 14.141 (2) through (6), Educational Placement, provide a rational framework that would allow class size issues to be determined locally, within the listed guidelines. The IDEA does not require minimum class sizes, and research is varied regarding the impact of class size at various levels. The use of teaching assistants that is widespread today, coupled with the current class size limitations, sometimes causes classrooms to contain as many adults as children, a situation which, in a given class, may not be appropriate. Local control would allow individual needs to dictate class size.

If the regulations remain as proposed, the "recommended maximums" will clearly become the subject of litigation and, ultimately, we predict, will become the minimum standards, thus eviscerating the local control provisions noted above. We believe that it will be far more productive to make each decision on class size an individual decision, consistent with the guidelines set forth in § 14.141.

4. **The requirement for a prehearing upon request should be eliminated.**

Currently, the requirement for a prehearing is waivable by either party to a due process proceeding. The propose regulations make a prehearing mandatory when requested by the parents.

There are many instances where a prehearing is simply a waste of resources, and the parties should not be compelled to engage in a prehearing where the issue in dispute are set. With attorneys now involved in most contested cases, this will result in additional unneeded expense for both districts and parents.

This proposal should be changed so that the word *shall* is replaced by the word *may.*

5. **The provision in § 14.162 (i) allowing parents to be represented by any person should be eliminated as violative of Pennsylvania regulations and law.**

Pennsylvania law is very clear that persons who are not admitted as attorneys may not "represent" persons in the manner that an attorney does.

1 Pa. Code, which provides the procedural guidelines for all Pennsylvania agencies, makes it very clear in §§ 31.21, 22 & 23 that representation in adversary proceedings is allowable only by an attorney.

42 Pa.C.S.A § 2524 specifically prohibits lay persons from practicing law under the threat of criminal penalties.

Federal law provides no different rule. This issue was addressed by the United States Court of Appeals for the Third Circuit in *Arons v. New Jersey State Bd. of Educ.,* 842 F.2d 58 (1988). In that decision, the Third Circuit Court of Appeals made the following statement:

"The carefully drawn statutory language does not authorize these specially qualified individuals to render legal services. Although the Act does give '[a]ny party to any hearing' the right to 'present evidence and confront, cross-examine, and compel the attendance of witnesses,' *id.* Sec. 1415(d)(2), those functions are not designated to be performed by lay advocates. Furthermore, the statute does not use the word 'represent' in subsection (d)(1), as would be expected if Congress intended to place expert and legal counsel on the same footing.

Our search through the legislative history has failed to uncover any indication that Congress contemplated that the 'individuals with special knowledge' would act in a representative capacity. The Senate Report describes the 'individual['s]' role as one of consultation, with emphasis on the responsibility to identify educational problems, evaluate them, and determine proper educational placement. S. Rep. No. 168, 94th Cong., 1st Sess., *reprinted in* 1975 U.S. Code Cong. & Admin. News 1470-71."

6. **<u>The Appeals Panels provision at § 14.162 (o) should be eliminated.</u>**

The Appeals Panels, which were designed to give parents an inexpensive means to contest hearing officer decisions, have proven, in our experience, to create additional expense without adding any clarity to the case law.

There are a number of reasons why we oppose continuation of the Panels, but the above statement is the primary reason: they add expense without adding utility to the process.

The Panels are currently supervised by no person. Their opinions frequently contain language that is decidedly unjudicial. They do not circulate their opinions internally, and no effort is made to resolve conflicts among the Panels. There is absolutely no sense of *stare decisus* in the approach of the Panels to decisions.

Contrary to the intent of Federal law, it is a practical impossibility to present additional evidence before a Panel, and it is our understanding that none of the Panels have ever taken additional evidence upon request. Additionally, a review of all of the decisions of the Panels will reveal that only one dissent has ever been filed. This is indicative of the fact that the decisions of the "Panels" are actually a decision of the assigned Panel member. The decisions of the Panels also depend upon which Panel is assigned.

There is such variability in the decision-making process that a school district or parent is well-advised to appeal in every case wherein there is any aspect of the decision of the hearing officer that is not liked.

Respectfully submitted,
Paul L Stevens
Paul L. Stevens
For SWEET, STEVENS, TUCKER & KATZ LLP

Original: 2144

RECEIVED
2000 OCT -5 PM 3: 13
INDEPENDENT REGULATORY
REVIEW COMMISSION

BARBARA J. LEES
2 HACKNEY WAY
HARLEYSVILLE, PA. 19438

September 14, 2000

Peter H. Garland, Executive Director
State Board of Education
333 Market Street
Harrisburg, Pa. 17126-0333

Re: Revisions of Chapter 14

Dear Mr. Garland:

Please do not authorize the change for Chapter 14 from regulations to recommendations. School districts can differ greatly on their interpretation of "recommendations". Many of the children will get lost in the shuffle.

We need to provide strong, clearly defined instructions and guidelines for the schools to follow. We are talking about children who want to learn and succeed!

Please remember the old adage-"if it ain't broke, don't fix it". The present regulations in Chapter 14 and 342 are working in Pennsylvania!! Please protect these children.

Sincerely,

Barbara J Lees

Barbara J. Lees

Rec'd
10/5/00

Original: 2144

9·14·2000
1·19·2000

Thank you for writing last winter. Unfortunately, the issues have not changed. Feel free to use your old letter—change the date—and add a few comments. Time is short! Please forward your letter to me by

Sept. 19. THANK YOU!
Barb D'Silva dsilva@nni.com
753 Shearer St.
North Wales PA 19454

State Board of Education

Re: Chapter 14

To whom it May Concern,

As a parent of a child receiving special education, I am very concerned about the changes to Chapter 14. As you go through the process, please keep the following in mind.

1) it is your responsibility for the best placement of the child
2) Class sizes must be set "in writing"
3) you cannot let <u>money</u> dictate your decisions - special education costs - and you must be willing to pay for it.

Special Education is only as good as the funds matching it. Teachers, therapists, 1 on 1 aides - <u>all</u> cost. And more & more medically fragile children are placed in elementary & middle schools. Nurses are required in

Do you know Spec. ed aides are only pd $8.00 an hour to start, lower than a library aide. thats sad! and should embarrassing officials.

classrooms. Etc, etc.

And you can believe if classroom sizes are raised, concerned parents like us will request 1 on 1 aides and most of us having "legity" justified reasons will get it. Think of that cost - much less what about the safety issue for our children.

I don't envy your position in trying to budget - it has to be a headache - but special education cannot be the place to save or cut money. It should be the one place to increase.

Sincerely,

Gail Beigel
230 Logan Dr
Hatfield PA 19440

Update as of 9/14/2000

① Keep statewide standards do not leave standards up to each district.

② Have federal & state rules be specific - don't leave "gray areas" that only hurt the children

③ Parents should be able to visit classrooms after visits to the school office periodically [illegible] approval.

Original: 2144

2000 OCT -5 AM 11:42

COMMISSION

September 13, 2000

Dear MR Garland,

I am writing to you on behalf of my daughter Jillian. Jillian attends a learning support class at an elementary school in the North Penn School District. When Jillian was diagnosed with learning disabilities she was attending a private school that was unable to take care of her needs. Our decision to place our child in the public school systen was based on their learning support system and the class size. Jillian is getting the education she needs because the class size is small and she can get the attention she needs to learn. Please do not leave the decision of classroom size to the individual schools our children will suffer and so will their education.

Thank you

Mary K Reeves

408 S. Tenth St

North Wales PA 19454

Original: 2144

RECEIVED
2000 SEP 14 AM 8:46
REGULATORY
REVIEW COMMISSION

UCP
Understanding Disabilities
Creating Opportunities

Capital Area
www.ucpcapitalarea.org

925 Linda Lane
Camp Hill, PA 17011
717-737-3477 voice/tty
717-975-3333 fax
mainoffice@ucpcapitalarea.org

September 12, 2000

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

Ladies & Gentlemen:

We are writing to express concern regarding changes being proposed by the PA Board of Education, Bureau of Special Education Programs to Chapter 14 of the PA Education Code. There are many areas of concern, but we will limit this communication to a discussion of three items of great interest to us and the families we serve.

1. Current regulations require districts to provide agreed-upon services within 10 school days of the completion of a child's IEP. The proposed regulations say "as soon as possible". Regulations are meant to provide specific parameters for both school districts and families, and 'ASAP' just doesn't do it. The 10 school days should remain as a rule.

2. Current regulations set standards for class size, and the age spread of students in a class at three (3) years. The proposed regulations intend to permit individual school districts to establish their own policy on class size, and the age range of the students in the classes. We cannot imagine children with special needs, ages 6 or 7, being in a classroom with other children who are 11 or 12. Physical size, emotional maturity, and a host of other issues can make this a dangerous environment. The 3-year age spread should remain, and state standards for overall class size should be maintained.

3. The worst circumstance involves the Board of Education's plan to include references to the federal Individuals with Disabilities Education Act (IDEA) by number reference only. In our experience, current regulations are difficult enough to understand, not only for parents, but also for teachers and school officials. It will be almost impossible for parents to understand regulations governing eligibility, services, appeals, etc., in the absence of an attorney or paid advocate, and will certainly set up a very adversarial process. The regulations should be written in clear language, and should include verbatim references.

Your consideration of these concerns will be greatly appreciated.

Sincerely,

George E. Ferrey Jr.

George E. Ferrey Jr.
Executive Director

A United Way Agency

Original: 2144

Karen S. Guerra

1860 Ferguson Lane
Blue Bell, PA, 19422
610-277-8644
Fax 610-277-4072

RECEIVED
2000 SEP 15 AM 8:43
REGULATORY
REVIEW COMMISSION

Dr. Peter Garland
Executive Director
Pennsylvania State Board of Education
333 Market Street
Harrisburg, PA 17127-03333

Dear Dr. Garland,

I am writing to you to tell you what a success the current Chapter 14 regulations are for the state of Pennsylvania. My son Cosmo has been the beneficiary of our state's leading edge approach to special education. I have no doubt that our state's Governor, Board of Education and legislators realize that the appropriate and available education of all our children is essential to our state's current and future economic and societal success.

Let me tell you how my son and family have personally benefited from Chapter 14 as it exists today:

- In 1995 my son met the criteria of a Pervasive Developmental Disorder-Not Otherwise Specified (PDD-NOS) diagnosis. He had many aspects of the disorder, but not all. Regardless, he was eligible for placement in a specialized Montgomery County Intermediate Unit (MCIU) Early Intervention (EI) class. His participation in this setting brought such dramatic results that within a year he had moved to a higher functioning class. In addition, he attended a "typical" Pre-Kindergarten class. The intensity of his early intervention provided him with the skills he needed to be ready to be fully included (with supports) in kindergarten and beyond.

- Throughout his MCIU contact and continuing with his inclusion in the Wissahickon School District, the ready availability of qualified Certified School Psychologists ensured that my son was accurately evaluated and appropriately placed. Without the specialized training of these professionals and their good judgement, I might have been denied access to what I was confident was the best placement for my son.

- I never had to wait to find the right place for my son because the imperative of prompt response was included in the regulations that governed the process of educating my son. I was ensured that the recommendations for placement would be executed not only because it was the right thing to do, but because it was the law.

- Within a year of his diagnosis and participation in the EI program of the MCIU, I felt confident that he would be able to handle being fully included in kindergarten if he had the right supports. Although I feel confident that the Wissahickon School District would have received my son with open arms even without Chapter 14 regulations, the presence of these regulations ensured that my son started kindergarten being fully included and that he continues to be included today in his present grade.

- As the daughter of two life long educators, I have always appreciated both the benefits and pitfalls of standardized testing. While they help us "keep score" of what our children are learning, they cannot always measure how our children learn and how much our children learn. The modifications of curriculum, testing procedures and instructional programs in order to accommodate those children who learn differently has been a great benefit to my child.

- I have been fortunate to be in a school district that continues to acknowledge the need my son has for various services such as an aide and speech therapy, among others. Today, I know that six months without the need for services must pass before my son has to find his own way through the educational system. That is a comfort zone that cannot be measured and I am grateful that Chapter 14 provides it.

I can assure you that without access to help for my son's areas of concern, his dramatic improvement from initial diagnosis to the present day would not have occurred.

When I think of the number of services my son might have required today had Early Intervention not been available to him, I applaud Pennsylvania's cost effectiveness of keeping Chapter 14 intact. When I consider the wonderful classroom placements my son has experienced, I cheer for the fact that certified school psychologists are involved with his prompt, professional evaluations and access to services. When I see his more than "typical" performance on state and national standardized assessments, I marvel at the wisdom of Pennsylvania to accommodate children of all learning styles. When I realize that despite his continued success, my son will require special services for the foreseeable future, I am comforted because my state has an exit criteria sufficiently long enough to ensure his success when independent of these services.

I will tell you that I have personally guided other parents through the Early Intervention process with the Montgomery County Intermediate Unit (MCIU). I have been a one-woman cheerleading squad for its services because I believe my tax dollars have never been put to better use. When I see other children making progress and moving in a positive direction along the Autistic Spectrum Disorder (ASD) continuum, I thank God that I live in Pennsylvania.

It's 2000 and it's an election year-- does anyone really want to take these benefits and services away from my son, my family and the other Pennsylvania children and families who currently look with confidence on the opportunities that Chapter 14 affords them?

This is not negativity that I bring to you. This is the positive endorsement of what we in Pennsylvania have. It's not perfect, but for my son Cosmo it is as close to "just another kid" as I could ever have hoped to achieve.

Gut Chapter 14 and you lose. Strip down Chapter 14 an you guarantee additional costs elsewhere down the line in the lives of thousands of children in Pennsylvania.

Leave Chapter 14 as it is today, or alter it only to expand and improve its regulations, and you will shine before this country as the state that truly puts ***all*** of its children first.

Sincerely,

Karen S. Guerra

Original: 2144

Karen S. Guerra

1860 Ferguson Lane
Blue Bell, PA, 19422
610-277-8644
Fax 610-277-4072

September 12, 2000

RECEIVED
2000 OCT -5 PM 3:15
REVIEW COMMISSION

Dr.Peter Garland
Executive Director
Pennslyvania State Board of Education
333 Market Street
Harrisburg, PA 17127

Dear Dr.Garland,

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Sincerely,

Karen S. Guerra

Karen S. Guerra

Original: 2144

RECEIVED

2000 OCT -5 PM 3:13

REGULATORY REVIEW COMMISSION

522 Ridge Street
Lansdale, PA 19446-2642
September 12, 2000

Peter H. Garland, Executive Director
Pennsylvania State Board of Education
333 Market Street
Harrisburg, Pennsylvania 17126-0333

Dear Mr. Garland and Members of the State Board of Education,

This letter is in response to the REVISED draft of CHAPTER 14 STATE REGULATIONS FOR SPECIAL EDUCATION. It has been my pleasure to be a special education teacher for the past twenty years. During that time I have had the privilege of seeing exciting changes taking place for the students with whom I work. These two decades have produced tremendous changes in the manner in which services are provided to exceptional learners, and the state of Pennsylvania has proudly remained in the forefront of providing a free appropriate education for all children. A big ingredient in our success has been the promulgation and implementation of state regulations which provide some degree of uniformity and equality for children requiring specially designed instruction within the school districts and intermediate units of our commonwealth. Regulations that influence class size, class composition and age range are those which have had the most impact upon the day to day instructional program for our students. The current draft of CHAPTER 14 fails to address these crucial areas which are highly supportive for classroom practitioners and the students we serve. Without those basic assurances of maximum class size/caseload, class composition and age range directly within regulatory language the quality and content of our programs is seriously in jeopardy. These basic issues that dramatically effect daily instruction and learning cannot be left to the discretion of local school districts.

The state board of education needs to be a strong voice for our special needs youth and provide direction so that all special education students in our commonwealth can be assured of excellent programming. As you consider revisions to the CHAPTER 14 draft please restore the current language regarding maximum class size/caseload, class composition and age range. These aspects of our current regulations are working in Pennsylvania and our students are the beneficiaries of their original intent.

Sincerely,

Jack R Fink, Jr

Jack R. Fink, Jr.

Original: 2144

Susan F. Rzucidlo
210 Laurel Heights Rd
Landenberg PA 19350
(610) 274-2364
September 11, 2000

RECEIVED
2000 OCT -5 PM 3:13
INDEPENDENT REGULATORY
REVIEW COMMISSION

Eugene Hickok,
Secretary of Education
PA Dept. of Education
333 Market ST
Harrisburg PA 17126

Dear Mr. Hickok,

I am writing to ask you to defend my son's right to a free and appropriate public education. My son Ben is 8 yrs old and is severely affected with autism. The regulations as they are currently written are the only reason my son has an appropriate placement. Without them he would have been forced into a generic special education program away from typical peers into a class that was too large for his needs. There would have been no attention paid to his need for behavioral interventions that have allowed him to learn to be included. Ben spends part of his day included with typical children and part of his day in a fully staffed autistic support classroom within a neighborhood school. From what I understand this is the only class of it's kind within the state.

When Ben was 5 and lived in the state of Delaware I was told by school staff that Ben would never read or write. He would never be able to do any sort of math and the best they could do would be teach him to be a good group home resident. We moved back to Pennsylvania soon after that and with the help of a lawyer, using the law of chapter 14, we started an autistic support class in district. Let me tell you it was a huge fight but when all was said and done, the district had to follow the law. It took close to a year to force this issue with the law in place! and we live in a district that is considered one of the better districts when it comes to special education To make a long story short, it has been two years since we began this class. Ben has over 100 sight words, his handwriting is one of the best in his grade level and he is doing simple addition.

Special Education does work in the state of Pennsylvania and I am asking you not to allow the reduction of regulations in special education. Not only does it hurt our children in the short term it will hurt our state in the long term. Without quality education, these special education children will become very expensive to care for as adults because they will lack the skills to become productive members of society. These are skills that are taught in special education under chapter 14. Appropriately sized classes, behavioral interventions, services delivered not just promised, and a continuum of services so that each child is served appropriately not just given what is already in place. Chapter 14 must be kept in place as it was originally written to protect these children. I will continue to work and keep track of what is going on in education. I am in contact with my representative, Chris Ross, and I keep him informed of my opinion.

Thank you for your time and consideration. I expect to hear that these changes have been dropped.

Sincerely yours,

Susan F. Rzucidlo

Susan F. Rzucidlo
PA resident and voter

cc Govenor Tom Ridge
Rep. Chris Ross
Barb D'Silva

Original: 2144

ASP
ASSOCIATION OF SCHOOL PSYCHOLOGISTS OF PENNSYLVANIA

RECEIVED
SEP 14 2000
PA. STATE BOARD OF EDUCATION

Office of the President
Darlene Lercher Smith, NCSP
14155 Anthony Highway
Waynesboro, PA 17268-9506

September 10, 2000

State Board of Education
Commonwealth of Pennsylvania

I am writing to you on behalf of the membership of the Association of School Psychologists of Pennsylvania. We want to express our concerns about the proposed revisions to the Pennsylvania Special Education Regulations and Standards. As written, school psychologists are no longer mandated members of the Multidisciplinary Team that is required to determine exceptionality and eligibility for special education programs and services (§14.123). Instead, we are to be included "when appropriate". Who will make this determination and how will it be made? School psychologists have been an integral part of the special education system since it's inception and for good reason. Please consider the following:

- School psychologists are the team members with the greatest knowledge of our special education laws and regulations and how they need to be implemented in the classroom for both regular and disabled students.
- School psychologists are professionals trained in child development, brain functioning, physical and psychological functioning, learning theory, behavior analysis and management, and multitudes of mental health issues involving children and families.
- School psychologists are the team members who can diagnose students as having disabilities and develop interventions and strategies to be used by regular and/or special education teachers to help these children in their home, school and community.
- School psychologists are trained to look at the whole child and objectively analyze test results from all team members to correctly identify students as being disabled using diagnostic criteria for that disabling condition. This objectivity and more holistic view of the child limits the misidentification of students based on group pressure from members of the team and incomplete information.
- School psychologists are trained to objectively evaluate infant and child development, academic skills, aptitudes and thinking skills, intellectual functioning, behavior and emotional functioning, perceptual-motor ability, and vocational/transition needs.
- School psychologists can interpret evaluation results from mental health and medical agencies.
- School psychologists are the team members who can facilitate the flow of information between home and school, the school and agencies serving that child, and the other professionals involved with the child and the family.
- School psychologists are trained to develop behavioral plans to positively change a child's behavior and they are trained in emergency response.
- School psychologists possess the skills to provide staff development training, parent training, direct counseling with students and staff, referral to appropriate medical or mental health services in the community, and research on whether curricula or interventions used with children are really working.

Only one person can provide all these services: the School Psychologist. If school psychologists are not mandated members of the Multidisciplinary Team, many school districts will unfortunately see an opportunity to eliminate personnel and to save money. This may lead to the misidentification of eligible students, additional due process hearings and place a burden upon parents to pursue private evaluations and the expertise they could have received from a school psychologist. Our schools, our students and their families need the expertise that school psychologists provide. Please reconsider the wording of Chapter 14 and it's regulations.

Sincerely,

Darlene L. Smith NCSP

Original: 2144

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INDEPENDENT REGULATORY
REVIEW COMMISSION

September 11, 2000

Nancy Behrendt
6215 Foster Drive
Morrisville, PA 19067

Work: (609)584-6835
Home: (215)428-9306

To the State Board of Education:

Please do not pass the proposed changes to Chapter 14.

I have been trying to obtain services for my daughter, Hannah, who has been diagnosed recently with Asperger's Syndrome, for five years. Anything making the system harder may leave Hannah with no help from the school system. She may spend the rest of her life staying at home watching TV, collecting SSI and welfare, unable to enter the workforce because intervention did not happen in the schools. I would gladly put my daughter in a special school, but at a $28,000 per year income for a single parent, I can't.

Please do not pass the revised Chapter 14. Please strive to improve to increase the education of children with disabilities--prevent more people from living off of the state.

Sincerely,

Nancy Behrendt

Nancy Behrendt

Original: 2144

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PAR
Pennsylvania Association of Resources
for People with Mental Retardation

1007 North Front Street
Harrisburg, Pennsylvania 17102
Phone • 717-236-2374
Fax • 717-236-5625

September 9, 2000

Peter H. Garland
Executive Director
State Board of Education
333 Market Street
Harrisburg, PA 17126

Re: Comments by the Pennsylvania Association of Resources for People with Mental Retardation (PAR) on the Proposed Rulemaking by the Department of Education – 22 PA. Code Chapter 14, Special Education Services and Programs – Published in the *Pennsylvania Bulletin* on September 2, 2000

Dear Mr. Garland:

This letter provides both comments and recommendations developed by the Pennsylvania Association of Resources for People with Mental Retardation (PAR). PAR is a statewide association which represents all mental retardation supports and services including early intervention statewide.

PAR endorses the spirit of regulatory reform as set forth in Governor Ridge's Regulatory Reform Initiative (Executive Order 1996-1). We examined this proposed rulemaking for consistency among its authorizing laws and the various regulations which interrelate with it or which are similar in scope. We looked for instances in this proposed rulemaking where the regulatory burden will be eased on the provider community without sacrificing essential public health and safety issues since this is a key goal of the Governor's initiative.

Following are our comments and recommendations:

COMMENTS:

§14.101 Definitions

"Developmental delay – A child is considered to have a developmental delay when one of the following exists:

(i) *The child's score, on a developmental assessment device, on an assessment instrument which yields a score in months, indicates that the child is delayed by 25% of the child's chronological age in one or more developmental areas.*

(ii) *The child is delayed in one or more of the developmental areas, as documented by test performance of 1.5 standard deviations below the mean on standardized tests."*

PAR strongly supports the State Board of Education's (Board) decision to maintain the eligibility criteria of a 25% delay in one or more areas.

~ ~ ~ ~

§14.132 ESY

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

Recommendation: PAR supports the Board's changes to this section from earlier drafts which reflects a good job of organizing, reformatting and clarifying this process.

~ ~ ~ ~

§14.133 (a) Behavior support

"Positive rather than negative measures shall form the basis of behavior management programs."

Recommendation: PAR supports the Board's decision to restore the requirement that behavior management programs be based on positive measures.

~ ~ ~ ~

§14.142 Caseload for special education

The proposed rulemaking included a chart that shows a change in the speech and language support itinerant. In the proposed rulemaking, it is 65; in earlier drafts, it was 90.

Recommendation: PAR supports the Board's decision to change the speech and language support itinerant from 90 to 65.

~ ~ ~ ~

§14.153 (4)(i) Evaluation

"The following timeline applies to the completion of evaluations and reevaluations under this section:
(i) Initial evaluation or reevaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60 days after the early intervention agency receives written parental consent."

This section does not state that a parent or team member may request an evaluation or reevaluation at any time. It should be stated specifically rather than just implied.

Recommendation: Add a §14.153(4)(iv) which would read: *"(iv) Initial evaluation or reevaluation may be requested by a parent or team member at any time."*

~ ~ ~ ~

§14.153 (4)(ii);(iii) Evaluation

(i) Notwithstanding the requirements incorporated by reference at 34 CFR §300.536 (relating to reevaluation), a reevaluation report must be provided within 60 days from the date that the request for reevaluation was received from the parent or teacher, or from the date that a determination is made that conditions warrant a reevaluation.
(ii) Reevaluations shall occur at least every 2 years."

PAR supports the Board's decision to restore the 60-day timeline for initial evaluation and reevaluation.

~ ~ ~ ~

§14.154 (d)(2) IEP
(d)(2) "The IEP of each eligible young child shall be reviewed by the IEP team at least annually."

This section does not state that a parent or team member may request an IEP review at any time, and should for clarity.

Recommendation: Add the following language: *"(d)(3) The IEP of each eligible young child may be requested by a parent or team member at any time."*

~ ~ ~ ~

§14.155 (a) Range of services
(a) "The Department will ensure that options are available to meet the needs of children eligible for early intervention. The options may be made available directly by early intervention agencies or through contractual arrangements for services and programs of other agencies in the community, including preschools, provided these other agencies are appropriately licensed by the Department or the Department of Public Welfare."

This section is confusing. Providers may believe that any preschool setting where eligible children are served, such as neighborhood nursery school programs, must come under licensure by the Department.

As Dr. Price informed PAR through email correspondence, the licensure requirement would only apply to those instances where the tuition was being paid by the early intervention program in order to implement the IEP. More often than not, the child would receive services from an itinerant teacher or therapist in a placement made by the parent with the tuition being paid by the parent. In those instances, the only requirement for licensure is that the teacher or therapist delivering the IEP service be appropriately certified or licensed to deliver that service.

To provide further clarification, this section should differentiate between the two types of relationships a preschool can have with an early intervention provider.

Recommendation: Provide clarification so that providers will understand that the licensure requirements do not necessarily apply to all preschool settings such as neighborhood nursery school programs.

Recommendation: Provide clarification so that providers will understand the differences between the two types of relationships a preschool can have with an early intervention provider: one contractual, where the early intervention provider is paying the tuition to carry out the IEP, and the other as a site where itinerant teachers and therapists provide service to children whose parents pay the tuition.

~ ~ ~ ~

§§14.161-14.162 Prehearing conferences and Impartial due process hearings and expedited due process hearings

PAR supports the Board's decision to restore pre-hearing conferences and due process procedures.

~ ~ ~ ~

Thank you for the opportunity to comment on these proposed regulations. We are available to discuss any of our recommendations.

Sincerely,
Shirley A. Walker
Shirley A. Walker
Executive Director

cc: Dr. Richard Price, Chief
Bureau of Special Education

✓John R. McGinley, Chairman
Independent Regulatory Review Commission

The Honorable Feather O. Houstoun, Secretary
Department of Public Welfare

Senator James J. Rhoades, Chair
Senate Education Committee

Representative Jess M. Stairs, Chair
House Education Committee

Senator Harold F. Mowery, Chair
Senate Public Health and Welfare Committee

Representative Dennis M. O'Brien, Chair
House Health and Human Services Committee

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

NNSYLVANIA ASSOCIATION FOR
RETARDED CHILDREN,
ANCY 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 [illegible] 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

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[1] The 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

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[2] In 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 <u>no</u> 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.

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

Received + Responded by E-mail 10/3/00

Original: 2144

Chapter 14 Testimony
September 21, 2000
Ruth K. Landsman
Parents Exchange & Parents Union

Good morning and thank you for the opportunity to share some general concerns and observations with you about the proposed Chapter 14 regulations. My name is Ruth Landsman and I am an advocate and coordinator for training at Parents Union for Public Schools, the local Parent Training and Information Center in Philadelphia. I am also the director of a 15 year old information referral and advocacy service and the intake coordinator for the Education Law Center . Through these various roles I am in contact with hundreds of parents per year. I am also the parent of an older teen who is eligible for and receives special education services. Since many of my colleagues have, in a very detailed way, gone through the draft regulations making specific comments I will focus more on the practical side of using these regulations and the impact they will have if implemented as proposed.

From a practical standpoint, my first recommendation would allow the use of the materials which have been posted on the PDE web site. The side by side regulations in PDF format is unsearchable. I would like to recommend alternate formats (WORD & Wordperfect) as had been provided previously for training materials and forms posted on PDE web site. This would allow greater access and ease to all who need to use the information. While our preference is still for full inclusion (rather than by reference) of the important federal requirements, the above mentioned change will at least improve the usability of the selected format.

In addition, the Board should consider following the lead of the Department of Public Welfare in extending the comment period and convening additional hearings so that families will truly have an opportunity to address the very serious concerns they have if the existing draft is to be adopted and finalized. The adoption of these regulations will have far-reaching negative impact on the next generation(s) of children and families needing support from the special education system.

Having said this, I move on to the fact that the purposes for the new regulations, as outlined in preamble, are not being fulfilled entirely. While it is true that 'court decisions applicable to the Commonwealth require regulations', these regulations do not reflect the requirements of many of them, including PARC. The rewriting of these regulations gives the Board an opportunity to really incorporate those decisions which have been included in BEC's issued by the Department in the years since the previous adoption of the regulations but you have failed to do so. It also falls short in implementation of other state legislation.

Some examples include, in no particular order:

- By adopting these regulations, as proposed, you will place the department in direct violation of Act 212 as it relates to eligibility of youngsters 3-5 for services under that legislation. This violation would be cause d by the adoption of the Federal definition of eligible young child which differs from the eligibility standard established in our own state legislation, Act 212.
- The requirement for districts to accept the responsibility of providing behavioral supports (Kellner).
- The transition timelines required for youngsters transitioning from preschool to school-age programs (Jacob M.).
- Extended School Year (and the broadening of issues to be considered for eligibility (Armstrong-Kline).
- LRE placements for students whose districts cannot meet their service or placement needs in a timely manner (Cordero).
- "... right to be represented at a hearing by any person of his choosing, including legal counsel, ... " (PARC) At least one attorney who represents a number of districts and intermediate units has advised his clients not to allow parent advocates to 'represent families at meetings either. It seems to fly in the face of collaboration or non-adversarial negotiations to push families to bring attorneys to IEP meetings when they feel the need for support.

In fact, over 33 % of the BEC's currently in existence draw from litigation or the existing regulations and standards at the state level. In addition, Federal regulations are cited for a number of additional BEC's. This information comes right from the PDE web site listing cross-references for all of the BEC's and it is important to realize that the full listing of BEC's goes well beyond special education practice and policies.

Areas of change seem to reflect very closely the areas of greatest complaints; class size, timelines (for evaluations and implementation), If you were to review the complaints filed within the past several years you would find this to be true. Given the current practices in Special Education which have prompted large numbers of complaints and requests for due process it is of great concern to me that the preamble seeks to have regulations 'current Special Education practices require regulations'. The way to fulfill this responsibility is not to lessen the requirement to be met but enforcement of the existing requirements. If an unusual circumstance presents itself, a waiver procedure already exists. Insist that it be followed rather than allowing the continuation of the poor policies and procedures districts currently follow.

"We recognize that the creation of quality programming and successful outcomes for students with disabilities requires more than technical compliance with procedural rules. The Department believes, however, that legal compliance is the base on which high quality programs are built. Also, incessant conflict between parents and districts over unresolved compliance issues diverts energy from other educational tasks that deserve our attention. Similarly, the need to provide compensatory education, to reimburse parent expenses, and to pay attorneys fees at the end of a long conflict divert resources from direct educational services. It is thus the policy of the Department to promote and ensure compliance with special education statutes and regulations through a coordinated program of plan review, complaint management, monitoring, technical assistance, and funding decisions".

As the above quotation, which comes from the Special Education Compliance BEC indicates the goal is to focus on quality special education services. It begins by saying, "The Pennsylvania Department of Education is responsible for developing and maintaining a system that ensures that each student with a disability receives a free appropriate public education and that each family has the benefits of a system of procedural safeguards." I am asking you to fulfill the responsibility which clearly exists. DO not proceed with the current proposed regulations because they fall VERY short of this commitment.

Original: 2144

RECEIVED
2000 OCT -5 AM 11:43
INDEPENDENT REGULATORY
REVIEW COMMISSION

Dr. Peter Garland, Executive Director
State Board of Education
333 Market St.
Harrisburg, Pa. 17126-03333

September 21, 2000

Dear Dr. Garland,

I am writing to you in reference to the proposed changes in Chapter 14. I am very concerned about the negative impact that these changes will have on my child's education and the education of other children with disabilities. I feel that the revised regulations have profound negative implications to students in both special education and regular education.

According to the proposed changes families and school districts won't be able to tell what the rules are. Since the rules are less specific, they will be more difficult for families to enforce. The rules will be left to the discretion of the local school district. I am concerned that money will determine what services a child would receive instead of what services are appropriate for the student. Each district will be able to determine teacher caseloads for special education classes.

For these reasons and many others, I implore the board to re-schedule the hearings until October and extend the time to comment.

Thank you for your time and attention,

M Christman

Irene M. Christman
1004 Knapp Rd.
North Wales Pa. 19454
215-855-9001

Original: 2144

753 Shearer Street
North Wales, Pennsylvania 19454
September 21, 2000

Peter H Garland, Executive Director
State Board of Education
333 Market Street
Harrisburg, Pennsylvania 17126-0333

Re: Public Hearing Testament
Comments to proposed revisions of Chapter 14 and 342
King of Prussia, Pennsylvania

Dear Mr. Garland and other Board Members:

My name is Barbara D'Silva, and I am co-coordinator of the Special Education Council of the North Penn School District in Montgomery County. More specifically, I am a parent of a 9-year old boy who has benefited GREATLY from the present state regulations (chapters 14 and 342). He entered early intervention at age 2-1/2, and he is presently elementary school-age within the public school system. The school district and I have worked well together, **because of the clearly defined regulations.**

Board members, I am here again to share my grave concerns regarding the proposed regulations on Special Education Services and Programs (Chapter 14 and the deletion of Chapter 342). If these proposed regulations are passed, I am confident that there will be severe negative ramifications not only to my special ed child, but also to typical children, and ultimately to all of society.

All of us—<u>everyone</u>—function better and perform much more efficiently when we are given concrete and clearly defined instructions. Our society functions because of rules. Without rules, society will be in chaos. The present regulations give parents and school districts clearly defined instructions. **We look to the State Board of Education for regulations—not mere recommendations**.

The proposed regulations fail to assure the crucial elements of an appropriate and successful learning environment for the student <u>and</u> teaching environment for the educator; those elements being:

- maximums of class size,
- maximums of caseload,
- class composition, and
- maximum age range within the classroom.

Without the basic assurance that maximum class size/caseload, class compositions, and age range are written directly as regulatory language, the quality and content of our programs are seriously in jeopardy. **These basic issues that dramatically effect daily instruction and learning cannot be left to the discretion of local school districts.**

Attached is an article from the local newspaper, The Reporter, May 19, 2000. The North Penn School District had been piloting a program to service ESL (English as a Second Language) students. The article states, "the new model initially was introduced because ESL assistants were taking on teacher responsibilities such as assessment placement and instruction. Under state mandates, ESL students should receive direct instruction from teachers." Educationally, the pilot was deemed successful; however, the pilot was terminated due to budgetary issues. **The article reports the Vice President of the School Board saying that "she did not receive an adequate explanation of what the state mandates actually said, and there is not an immediate need to change the current program."** Imagine what will happen when there are no mandates regarding maximum class size, teacher caseload, age range, and class composition for students needing special education.

Please, board members, please remember and protect these children who are innocent. They all can be productive members of society. We, as teachers, administrators, parents, and advocates must provide environments and programs such that these children can reach their potential. We must have HIGH EXPECTIONS of these children!! Given high expectations, MOST of these children will rise to the occasion.

Attached are letters from not only concerned parents, but also concerned educators. Please review these letters, and take these concerns seriously. We understand that the "intent of the Board is that eligible students and eligible young children to be provided with quality special education services and programs"; however, we do not feel the Board's intent is being met with the proposed Chapter 14.

In the proposed Chapter 14, please seriously reconsider your position in the following areas:

1. **Class Size—Please do not give school districts the freedom to determine maximum class size. KEEP MAXIMUM CLASS SIZE AND CASE LOAD A REGULATION!!!** Due to budget issues, regular education classes are becoming bigger and bigger. Without class size regulations for special education, special education classes will undoubtedly increase! Effective learning does not occur in overcrowding. School districts may save money in the short-term with large class-sizes; but the school districts and society will pay a much higher price in the long-term!

2. **Class Composition—Please keep the special learning style classrooms as delineated in the present Chapter 14 regulations A REGULATION:** these special classes address different areas of need (speech & language, autistic, emotional, sensory, etc). If you mix the learning styles, the teacher will not be able to adequately meet these children's needs.

3. **Age Range within a Classroom—please keep the 3 year maximum age range as stated in the present Chapter 14 regulations A REGULATION.** I had a personal experience when

my 5-year old son had instructional classroom time with children up to 12 years of age. Without the present regs, that situation would have continued. However, with the present reg of a 3-year maximum age range, the group was divided appropriately.

4. **Caseloads—Itinerant Special Education teachers. A caseload of 50 students is TOO HIGH!** With the increased number of eligible children being included within regular education, there is an increased need for itinerant special educators to service these children within the regular education classroom. **The caseload of an itinerant special education teacher should not exceed the caseload of the resource/part-time special education teacher (15 students).**

5. **Caseloads—Speech and Language Support. A caseload of 65 students is TOO HIGH!** Our society is a language-based society, and without adequate understanding and usage of language, a child will not succeed. Assuming the speech clinician allows 30 minutes per session, she could only have 10 sessions/day or 50 sessions/week—in other words, kids would have to be seen in groups and probably only once a week. **A more appropriate caseload for a speech and language clinician would be 20 students—itinerant/resource.**

6. **Readability/Organization**—referring back to the Federal IDEA regulations is awkward. Please somehow simplify this without losing the teeth within the regulations. **Try to make the regs more user-friendly to parents <u>and</u> educators.**

Board members, please try to envision what will happen if class size, caseload, class composition, and age range are not regulated. I expect the following to occur:

- large special education classes with mixed disabilities,
  (consequently none of the students' needs will be met, and these students will not progress)

- more special education students with greater severity of disability being served within the regular education classroom where there are presently no regulations
  (consequently both regular ed and special ed students will be inappropriately served)

- ultimately, more burden and expense to society because all of our children (both special ed and regular ed) are not being appropriately educated.

Board members, at a minimum, the proposed regulations must be changed such that class-size, caseload, age range, and class make-up are regulations.

However, in order for Chapter 14 to meet the needs of ALL children needing special education, regulations need to be written for the inclusion model. <u>This must be addressed</u>! More and more eligible students are being included; however, regular education class sizes are getting bigger within districts, and there is little support given to the regular education teacher. Pennsylvania needs regulations regarding class-size and support personnel for the inclusion model.

My own children's elementary school services approximately 650 students, grades K-6. Of this 650 enrollment, last year 79 students were identified to receive specially designed instruction/ special education for academic subjects. (This tally does **not** include students who qualify for only related services or for gifted education.) These eligible students were being included in regular education, but with very little, if any, support.

How can the regular education teacher be successful? My daughter was in a 6th grade regular education class with 27 other children—therefore, the caseload was 28 students for the regular education teacher. Among those 28 students, 11 were gifted, 1 was multi-disabled, 1 was hearing impaired, and 4 required learning support—only 11 children were typical! **How was this regular education teacher able to meet the widely diverse educational needs of all of these children? It was humanly impossible.**

How can the eligible child be successful? Many of these eligible children are pulled out to a resource room to receive services for reading and/or math. Board members, their disabilities are still with them when they return to the regular classroom to read their social studies book , note observations during a science experiment, and participate in other academic activities. Their disability does not suddenly disappear! **The teaching approach must be modified for these children throughout all academic subjects. The child AND the regular education teacher need support!**

Space. The classroom housing the 6th grade class I referred to above also lacked appropriate space. Twenty-eight children were being instructed in a room measuring approximately 28 x 22 feet (approximately 616 square feet). 616 square feet is much less than the 784 square feet required to teach 28 children in a special education classroom (28 square feet/child). **This space requirement (28 square feet/child) should be applicable not only in the special education classroom, but also in the regular education classroom.**

How can the Board assure that eligible students are being provided with quality special education services and programs within the inclusion model? Regulations need to be written. Consider adding the following regulations:

1. **Add a classroom type called "inclusion" and establish a weighted formula for eligible students.**

disability	regular ed equivalents
PDD/Autism	4 regular ed students
Speech and Language impaired	4 regular ed students
Deaf and Hearing impaired	4 regular ed students
Multi-disabilities	4 regular ed students
Blind & Visually impaired	3 regular ed students
Emotional	3 regular ed students
Learning Support	3 regular ed students

For example, if the maximum class-size of a regular education class is considered 22 children and 2 learning support students are to be included, then the make-up of the class would be
16 typical children plus 2 eligible children = 18 total children

2. **Establish a regulation for one trained parasupport person for every 4 eligible students within that regular education classroom.**

3. **Establish a regulation for an itinerant special education teacher to observe, trouble-shoot, and aid the classroom teacher with modifications to the general curriculum.** An itinerant teacher cannot successfully monitor, trouble-shoot, and offer lesson plans with a caseload of 50 students!!! Her caseload cannot exceed those of a part-time learning support teacher—15 students.

4. **Establish a regulation for adequate instructional space for all of the students (28 square feet per student). This regulation must be present not only in the special education classroom, but also in the regular education classroom that services these eligible children and ALL children.**

Members of the Board, the present regulations in Chapters 14 and 342 are working in Pennsylvania!!! At a minimum, the content of the present regulations must be kept; however, to appropriately serve all eligible children, the regulations must be expanded to include the "inclusion model!"

Passage of the proposed regulations will negatively impact ALL children and ALL of society.

Thank you for your time and attention.

Sincerely,

Barbara T. D'Silva

Barbara T. D'Silva
215-699-0241

Attached: article from **The Reporter**, May 19, 2000
letters from concerned parents,
concerned educators,
concerned therapists

PLEASE READ AND CONSIDER THESE LETTERS SERIOUSLY!!!

From The Reporter, Friday, May 19, 2000

Board rejects ESL plan

Months of work scrapped

By SARAH LONG
Staff Writer

LANSDALE — After months of devising, revising, debating and deliberating, the North Penn School Board voted 6-3 Thursday against creating four Newcomer Centers for English as a Second Language students.

"A lot of time and effort has been put in by (director of instruction Betty Robinson) and her staff," said board member Vincent Sherpinsky. "But I'd rather err on the side of caution — I'm uncomfortable about this."

Board members Bill Allen, H. Bruce Gordon and Terry Prykowski voted in favor of the proposal.

"I think the proposal ... provides a win-win situation for all the students,"

Please see ESL on A2

Continued from Page A1

Prykowski said. "It is a modified model of where we've been and brings the best of both worlds to the district."

Administrators recommended the formation of the centers after studying a pilot program at Oak Park and Hatfield elementary schools this year. The new model entailed busing students who don't speak English to the centers for increased direct instruction by certified teachers.

Proponents said the new model would enable the students to assimilate more quickly into the regular education classroom, but opponents said the proposal would be emotionally and socially damaging.

The new model initially was introduced because ESL assistants were taking on teacher responsibilities such as assessment placement and instruction. Under state mandates, ESL students should receive direct instruction from teachers.

But board Vice President Donna Mengel said she did not receive an adequate explanation of what the state mandates actually said, and there is not an immediate need to change the current program.

"Apparently, it has great consumer satisfaction because there have been no consumer complaints," Mengel said.

The pilot program will be continued for another year at Hatfield and Oak Park, Robinson said, and administrators will work on a new proposal, to be presented to the board around December.

Directors want budget to be cut

By SARAH LONG
Staff Writer

LANSDALE — The North Penn School Board voted 8-1 Thursday to adopt the district's $125 million preliminary budget.

School board member John Schilling was the sole dissenter.

Many prefaced their votes by saying they did not support the proposed 0.49-mill increase, which would include more spending for staffing and technology.

That increase means taxpayers with a home assessed at $125,000 will pay $62 more in taxes.

"I intend to support the preliminary budget because we are obligated to under the law," said board member Vincent Sherpinsky. "But I want to make sure the administration continues to work to lower the budget."

At a Finance Committee meeting Monday, board members asked administrators to lower the budget by as much as $1 million.

Because the budgetary process was delayed when former finance manager Jim Sauers resigned in March, administrators were not able to draft a satisfactory budget before the preliminary vote.

However, the board is required to pass a preliminary budget for inspection by the public at least 30 days before final approval June 30.

Original: 2144

STATEMENT TO THE PENNSYLVANIA
STATE BOARD OF EDUCATION:
COMMENTS ON PROPOSED
CHAPTER 14 REGULATIONS

Submitted by:

Autism Society of America

of Greater Philadelphia

September 21, 2000

INTRODUCTION

My name is Kathleen Weaver and I am submitting this statement as Vice-President of the Autism Society of America, Greater Philadelphia Chapter . Our chapter represents over 800 families within the 5-county Philadelphia region as well as several satellite support groups. Our chapter is the second largest nationally.

BACKGROUND

Autism is a neurological disorder resulting in deficits in communication, motor skills, social relatedness, and sensory processing. In short, children with autism, see, feel, hear, smell and perceive the world differently than neurologically typical peers and are often unable to communicate their perceptions to others. This results in children who have heightened senses actually perceiving normal sounds, sights, smells and touches as painful. This background is critical to any educational discussion.

PROPOSED CLASS SIZE REQUIREMENTS

The larger a class size, the more sounds, bodies, smells and other environmental stimuli there will be. Too much stimuli and an inability to communicate for a child with this disorder results in behavioral responses. In other words, a child who cannot say "that sound hurts my ears" will inevitably find other ways of coping. It may be in the form of tantrums, screaming, behavioral outbursts or even withdrawal. Children with language may hold this information in because of their desire to "fit in" and abide by the rules. The same results may eventually overcome them as well.

The Commonwealth's failure to set class sizes and the high "recommended" maximum caseloads for a single teacher makes children with autism particularly vulnerable.

- Children included on itinerant caseloads will NOT receive the support needed when a teacher can be assigned upwards of 50 students with other disabilities. How can a teacher with 40 hours in a school week and 50 children possibly program, observe, adapt curriculum, meet with parents, advise regular education teachers and attend IEP meetings for those children each week? This allows for less than 1 hour per week per student and that assumes there are no IEP meetings to take away from direct intervention. This is particularly true when supporting a child with autism means behavioral, educational, sensory and other plans for intervention as well as the need for communication between home and school.
- Even if a teacher is hired for itinerant autistic support alone (highly unlikely) he/she will have 12 very complex children for whom to program. This is simply too high when you consider the challenging behaviors, need for program development, curricular adaptation and accommodations.

DELETIONS OF MANDATED BEHAVIOR PLANS

Since autism involves neurological malformations believed to be at the cellular level of the brain structures, it is not surprising that it cannot be diagnosed by virtue of a scan or blood test.

Autism is diagnosed strictly by the "BEHAVIORS" of the individual child. These are symptoms of underlying neurological damage. Autism by its very definition is expressed in behavioral symptoms and any intervention in a classroom must include a consideration of positive behavioral techniques. The deletion of 22 Pa. Code § 342.36(b) requiring the use of positive behavioral approaches before any more aversive techniques makes children with autism vulnerable targets. It is, metaphorically speaking, as real a barrier to those with autism as a set of stairs to those in wheelchairs. Likewise, delete the current mandate for a positive behavior plan for a child whose behavior interferes with his or her learning and you ***prevent access*** to regular educational environments for children with autism.

- These proposals will force children with autism out of inclusion, thereby violating the very intention of IDEA. This forces a population desperately in need of inclusion out of their neighborhood venues.
- Long term, these proposals will destroy the Commonwealth's goals for individuals with autism to live as independently as possible. Without a cap on class size, schools in Delaware and other counties will inevitably make classes as large as the Commonwealth will tolerate, not considering the needs of individual children with IEPs. This will preclude the inclusion of children with autism, which in turn will prevent the social skills training with peers they desperately need. They will be unable to function in the community as adults if they have no practice as children.
- Many Delaware County public schools are already reluctant to allow children with autism to be included. Although illegal, many schools encourage children with autism to be sent to approved private schools and very few schools provide a continuum of service for children with autism. Most parents who are including children with autism in neighborhood schools have had great difficulty. Delaware County schools, in particular, are often recalcitrant when it comes to following IDEA and the current Pennsylvania regulations. Although behavior plans are now mandated for these children, when parents request them, they are often denied. One school tried to convince a parent that a behavior plan was "too much work" for the school district. These proposals will only make it harder for parents of children with autism to pursue inclusion. The Commonwealth's proposals simply give schools wider berth to send children with autism out of the community and avoid the hard work and investment it takes to include this population.

CONSEQUENCES TO THE COMMONWEALTH

There will be overwhelming financial consequences to Pennsylvania if these regulations are adopted. The National Institutes of Mental Health's website lists the institutionalization risk of this population at over 60%.[1] Should the Commonwealth ignore this population and its educational needs, Pennsylvania will surely have this 60% in its residential settings in 20 years, at a cost of hundreds of thousands of dollars per year per individual for life. Couple with that, a statistic collected by PDE itself that there has been an 800% increase[2] in autism diagnosis in Pennsylvania since 1990 and the Commonwealth will face a crisis if it does not invest educationally in this population. This is, quite frankly, not only an issue of humanity and dignity, but a matter of dollars for the Commonwealth.

INCORPORATION OF IDEA BY REFERENCE

Another issue to which ASA takes exception is the incorporation of IDEA by reference into the regulations. IDEA is a document which is several hundred pages long. It is unfair that parents should need to read Chapter 14 and IDEA side by side when individuals at the Commonwealth are paid to write Chapter 14 regulations **–not only for lawyer and legislator—** but for constituents. Parents of children with autism often do not sleep at night due to their children's sleep disorders. Their waking hours are often spent in one-on-one supervision of children who climb out windows, ingest non-food items, jump down flights of stairs and get into many dangerous situations. Add to this responsibilities of caring and supporting the rest of their family and you can already imagine the stress level of parents with autism. Shirley Cohen, author of *Targeting Autism* says:

> *"All families experience stresses, and many experience rifts and dislocations. What's particularly different about families in which a child has autism is that the source of momentum for these families, and the fulcrum on which family life turns, is the autistic individual."*[3]

Parents do much advocacy; however, they cannot be expected to become attorneys and interpret federal regulations. The Commonwealth needs to take on its charge and interpret IDEA regulations in PA regulations.

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[1] "Autism: Finding Help and Hope," NIMH Publication, 1999, pp. 1, 22

[2] "Pennsylvania's Initiative on Serving Students with Autism Spectrum Disorder," Instructional Support Center of Pennsylvania, 1999.

[3] *"Targeting Autism,"* Shirley Cohen, p. 63, 1998 University of California Press

REACTION TO THE BOARD'S PURPOSE

In the proposed Section 14.102, it states:

> *It is the intent of the Board that children with disabilities be provided with quality special education services. The purposes of this chapter are to... enable the student to participate fully and independently in the community...[and to ensure] the rights of children with disabilities and parents of these children are protected.*

From the standpoint of the Autism Society of America, Greater Philadelphia Chapter, the Board has failed in its purpose if these regulations are adopted as written. We urge that the standards and regulations currently in place be maintained with respect to class size, teacher caseload, positive behavior plans and interventions. In fact, we recommend that further regulations be developed with respect to enabling children with autism to be served in quality programs in their neighborhood schools.

With respect to the Board's absolute insistence that parents look up **volumes** of federal law incorporated in IDEA, **we recommend that the Commonwealth publish every section of IDEA incorporated by reference and make them available FREE to all parents of children with disabilities.**

In conclusion, ASA of Greater Philadelphia and its members remain committed to keeping our children in our communities with appropriate educational programming and a continuum of services. Should these regulations be adopted, parents will intervene with challenges at every level of the process. We are a growing population of families. Autism is now the third largest developmental disability in the nation. The wealth of scientific and neurological research as well as the testimonies of independent adults with autism such as Temple Grandin, Ph.D. has helped to raise awareness in our nation and communities.

One cum laude graduate of a prestigious university diagnosed with autism as a child has been quoted as saying:

"I grew up on the fringes of typical society..."[4]

As parents of children growing up in the 21st Century, we will not stand for our children being pushed to the fringes, but will continue to fight for their place and right to belong in their own communities. Thank you.

Autism Society of America
Greater Philadelphia Chapter
325 Tyson Avenue
Glenside, PA 19038-3120
(610) 358-5256

Kathy Weaver

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[4] Ibid., p. 20.

Original: 2144

September 20, 2000

Copy

RECEIVED
2000 SEP 26 AM 9:09
REVIEW COMMISSION

Ian Krisher + his sister, Rebecca.

Dr. Peter Garland, Executive Director
State Board of Education
333 Market St.
Harrisburg, PA 17126-03333

RE: Proposed Changes to Special Education Services

Dear Dr. Garland,

We are writing to you in regards to the proposed changes to the State Special Education Services and Programs 22 PA Code, Chapter 14 and delete related Chapter 342 that was officially published on September 2, 2000. We are very concerned about some of the proposed changes and urge you to withdraw the regulations until their impact can be assessed and to allow more parents of special needs children a chance to find out about the changes and voice their concerns. The only way we knew about the changes was because we are on the mailing list of a quarterly newsletter regarding education. Many parents are only just now finding out about the changes. That is only due mostly to other parents, like us, trying to pass the information on through word of mouth. Those parents are just as concerned as we are but do not know what they can do about it as information in that regards is rather sketchy, to say the least. Also, like ourselves, many parents find it practically impossible to attend public hearings as they are too far away and there is not enough time in the day to finish our daily living needs let alone take a day away to attend a meeting. I have been trying to find the time for almost the last two weeks to write this letter but could not do it until this evening. Also, the whole prospects of writing an "official" letter is rather daunting to most of us parents, let alone attend a public hearing.

We wish to attempt to list a few of the reasons for our concern. We are the proud, loving parents of a five (5) year old, blond haired, and green-eyed boy named Ian. Ian is PDD/autistic and has the usual developmental delays in the areas that autistic individuals have: communication, social skills, behavioral, play and sensory integration. However, we consider ourselves one of the luckier parents. Ian appears to have normal IQ (albeit on the lower side), he is affectionate (but on his own terms) and is considered a "high-functioning" autistic child. Through intensive early intervention and private speech therapies over the last two years he has also become fairly verbal, although his speech is still often unintelligible to most people. He is currently attending the early intervention program through Berks County Intermediate Unit, is receiving wraparound services and has private speech therapy twice a week. Many parents are not as lucky as we are and we count our blessings. However, this same child was not anything like that 2 ½ years ago, when he was first diagnosed. He was almost three years old, nonverbal, would not look at anybody in the eye (including us), and would actually roll his eyes back in his head if you tried to hold his chin to make him look at you. He would hide under tables, chairs, etc. whenever possible to avoid being around people and could not stand too many sensory things (such as noises, bright lights, being touched lightly, having his face touched, etc.). He would repeat the same actions over and over again, not respond to his name, sometimes appear to be deaf, not imitate others, not play with others, wrap cords and strings tightly around his torso, wrists or neck, and do many other "quirky" things. It has only been through all the help we received under the current special education laws that he has come so far in his progress. His teachers and therapists feel that he will probably be able to be mainstreamed in a public school (with an aide) in another year or so.

Due to our own experience and other parents like us, the proposed changes bring fear to our hearts. This is not only for us but also for other parents who will be getting their child similarly diagnosed in the near future. The state laws, in many cases, provided better protection and help for our children than the federal law. We are also concerned at the way the sections keep referring to federal regulations as numbers instead of describing the requirements in a user-friendly manner. We need to be lawyers to make sense of them!

Our other concerns are:

Our children often need very small class sizes with a low child to teacher ratio. It is also important to try to keep separate classes according to types of disability. What helps an autistic child may very well not be of much help to another type of disabled child and vice versa. I am referring to 14.141(2). At the same time, there should not be a retreat from inclusion. I am referring to the deletions in 22 Pa. Code 14.41 and 14.42; 342.41 and 342.42. The current regulations on educational placement do a much better job of protecting our children's rights to the most appropriate, least restrictive environment.

The retreat from age appropriateness standards: 14.141(6) – should be student specific.

14.101 (definitions) are also a concern. Please don't delete the current definition of "appropriate program", nor delete the definition of "change in placement" or narrow the definition of "eligible young child". In doing so, many more parents will be forced to go through litigation to get the help that their child needs, and more children will slip between the crack of the very important help they need in their younger years.

The changing of the timeline for the implementation of the IEP to "as soon as possible" is another concern (14.131). We parents need a <u>set number of days</u> to help enforce that our child gets help "as soon as possible". Leaving the wording so general is only asking for trouble in the future. The sooner a child gets help, the better the outcome in many cases. Studies have upheld that philosophy.

The 14.155(d) regarding duration – It should include the provision of the "Duration of Early Intervention Program Year" BEC dated September 1, 1997. Our son's program has been based on a 12-month year and we know how important that has been to his progress. This requirement should be formally codified in these regulations.

These are just a few of the concerns we have. There are many more but I am running out of time. In conclusion, we would like to state that the current 10-year-old regulations have served most children well in protecting their rights and our rights as parents, and we feel that the regulations should continue in clearly defining the responsibilities of the schools. The proposed changes are just too generalized, watered-down, require two separate documents to be understood, take away too many protections for the child in regards to class size, re-evaluations, parental involvement in the IEP, loss of short-term objectives in the IEP, loss of behavioral management plans and timelines in general. These issues are all of major concern to my husband and myself.

Please do not let these children down. They have too many strikes against them already, through no fault of their own. We parents need all the laws we can get in providing the best help we can for our kids. My husband and I love Ian so much and are willing to do all we can to help him. Wouldn't you do the same for your loved one?

Most Sincerely,
Vicki Krisher

Vicki Krisher
Michael Krisher
62 Grange Rd.
Bernville, PA 19506
(610) 926-6768

cc: Robert Nyce, IRRC
Gov. Tom Ridge
Secretary Eugene Hickok
Hon. Samuel Rohrer
Hon. Jess Stairs
Senator James Rhoades
J. Stotland, Education Law Center

Original: 2144

Peter and Elizabeth Bell
200 Lafayette Avenue
Oreland, PA 19075
215-884-3394
kallenbell@msn.com

RECEIVED
2000 SEP 28 AM 9: 12
INDEPENDENT REGULATORY
REVIEW COMMISSION

September 20, 2000

Eugene Hickock, Secretary of Education
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126

Dear Mr. Hickock:

We are the parents of three wonderful children, the eldest of whom regressed in his second year and disappeared down a slippery slope into the world of autism. Since his diagnosis with Pervasive Developmental Disorder (NOS) at age three, we have labored to bring our son back to us. Tyler has begun on the long way back, after countless 40-hour weeks of applied behavior analysis (ABA), speech and OT sessions and the dedicated efforts of family, friends and a qualified and collaborative team of professionals providing services through early intervention (EI).

Upon our son's transition to school age programming, we were told it was time for us to let go and 'trust' the school system. We had to beg for the minimal programming transition afforded Tyler, and no one wanted to learn from the wealth of knowledge the EI providers had developed with respect to our son and his complex learning style and needs. The school-age program delivered by our local intermediate unit was only superficially in place at the beginning of the school year, and much of the outlined specially designed instruction was not instituted. Over the last year, we have found the educational system to be anything but trustworthy. The LEA has violated timing regulations, failed to have regular education personnel at IEP meetings, failed to deliver the services outlined in the IEP and failed to issue prior written notice in response to our requests for information or program changes. Nine months since our request for increased mainstreaming and a change to educational methodologies appropriate for our son, we still do not have an acceptable, signed IEP. Only this week we received a copy of our son's 1999-00 year-end progress report (overdue since mid-June), which indicates that he achieved a level of competency or mastery on only 22% of his IEP objectives, in contrast to 80-90% performance in his years in EI.

We have attempted a variety of methods to encourage the LEA to provide an appropriate education for our son, eventually finding legal representation and incurring considerable expense. We are currently awaiting the results of a complaint we registered with the Division of Compliance about these procedural violations, which have resulted in Tyler starting the school year without a sufficiently-defined or appropriate program. While the division's report may deliver a statement about the LEA's lack of compliance, it will do nothing to remedy the resultant harm to our child.

Even with the current Chapter 14 regulations setting forth very explicitly what the guidelines are, our LEA has repeatedly violated the spirit and content of IDEA and state regulations. Because of the existing regulations we know very well what our child's rights are; the LEA should also know this, and yet they continue to violate them. What will happen when the parameters are even less defined?

We find the thought of the state allowing open interpretation of IDEA and freedom of decision-making to local educational authorities unacceptable. Just as US Representative Charles Bass and others in Congress are showing their support for IDEA and their responsibility and commitment to special needs individuals, it is preposterous that the state of Pennsylvania would remove the existing protections.

Instead of creating vague parameters, we believe the state education agency has a responsibility to *increase* the level and specificity of protection afforded to these children, who are otherwise often placed in the LEE (least expensive environment.) While certain school districts admirably have taken appropriate responsibility for the needs of their children, others are motivated by what is simplest, easiest and cheapest. We believe that the state should be working to ensure that the districts and other agencies are in compliance with the parameters that *are* set forth, through increased involvement, supervision and power to oversight agencies such as the Division of Compliance. Furthermore, we believe the state should provide increased review and supervision of the actions and decisions of officers of the Office of Dispute Resolution, as this area of dispute resolution appears to be fraught with inconsistencies and lack of adherence to regulations and case law.

We are the parents of a special needs child. Our resources are stretched to the limits, as we research and evaluate medical interventions, ponder long-range options, try to find qualified assistance, support biological research efforts and labor every available moment (and then some) with the children we love. We do not get much sleep. For every letter that you get from someone like us, please know that there are hundreds more families out there, who are too consumed by their day-to-day responsibilities to their children or their struggles with school districts, doctors or insurance companies to write to you today.

It is heartbreaking to watch the child you worked so hard to bring back from the edge of an abyss begin to regress and slow his progression because of the inappropriate actions of LEA personnel, whatever their motivation. While other parents go to our school board meetings and talk incessantly about getting the *best* education for their children, we are only allowed to ask for what is appropriate. Please do not make us beg. Please provide the school districts and agencies in this commonwealth direction, guidance and an admirable example in showing what an appropriate education actually is, and hold them to the expectation that they deliver it. Maintain the specific Chapter 14 regulations and add to them parameters that reflect the recent changes to IDEA and tools that will allow our children to continue to grow and realize their potential, despite the many other challenges they face.

We appreciate your consideration.

Sincerely,

Peter H. Bell
Elizabeth K. Bell

Cc: Dr. Peter Garland, Executive Director, State Board of Education
Independent Regulatory Review Commission, State Board of Education
Governor Tom Ridge
Senator Stewart Greenleaf
Representative Eugene McGill

Original: 2144

September 20, 2000

RECEIVED
2000 OCT -5 PM 3:16
INDEPENDENT REGULATORY
REVIEW COMMISSION

Peter Garland
State Board of Education
333 Market St.
Harrisburg, PA 17126-03333

RE: POSSIBLE REVISION TO CHAPTER 14

Dear Mr. Garland:

My son, Matthew, is 9 1/2 years old and was diagnosed with PDD at age 3. At that time he began receiving appropriate services (special education, speech, occupational therapy) through our Intermediate Unit.

Matthew, though not your typical 9 1/2 year old boy, has made tremendous progress over these past six years due, in my opinion, to the proper programming. I only hope that some day Matthew can be an independent member of our society. This can only happen if services remain the same and children like Matthew are given the individualized services they so desperately require. How more can we help society than giving these children what they need during their school years so they do have a fair chance at a brighter future?

The present system is working for my son and I sincerely hope there will be no revisions. I ask that you keep Chapter 14 the same. Matthew is depending on it.

Sincerely,

Karen Yildirim

Karen Yildirim

11 Curry Lane
Horsham, PA 19044
(215) 641-9618

cc: Eugene Hickok
Governor Tom Ridge

Original: 2144

Rec'd
10/5/00

Scott & Heather Snyder
1610 Hillcrest Road
Glenside, PA 19038

September 20, 2000

Dr. Eugene Hickok
Secretary of Education
PA Department of Education
333 Market Street
Harrisburg, PA 17126

RE: Proposed changes to PA Special Ed and EI regulations

Dear Dr. Hickok,

As parents of a child diagnosed with Autism Spectrum Disorder almost two years ago, we found ourselves having to learn Pennsylvania's Special Education regulations in great haste. How will changing the explanation of the state's rules to references to federal regulations serve families faced with this daunting task?

Surely you know that in disorders such as autism, the timing of intervention is critical to the child's outcome. Why place one more time-consuming hurdle in that child's path?

We are already exhausted by having to care for our children. We are forced to become medical experts, educational experts, lobbyists, fund-raisers, and advocates. We do not have time to write letters to you, let alone monitor how the state might be changing special education regulations when we are tied up with the demands of parenting special needs kids.

Certainly changing the rules to be less specific does not serve our children. If, for example, the requirement that a child's IEP be implemented within 10 school days is changed to "as soon as possible," what can the child's parents expect? How does this change benefit our children?

How do parents advocate for their children if their right to classroom observation isn't clearly defined? How are children served when transitions between early intervention services are undefined? How will foster children fare without the benefit of advocates?

Do these changes promote excellence in education and instill public confidence in public education? Are the consequences of these changes to be the legacy of the Ridge administration to our children? Please reconsider.

Sincerely,

Scott & Heather Snyder

Original: 2144

Benkovic, Susan

From: Robles, Pete [probles@ballinger-ae.com]
Sent: Wednesday, September 20, 2000 12:16 PM
To: '00statbd@psupen.psu.edu'
Subject: special education chapter 14

To whom it may concern,

My wife and I are parents of a 6yr old PDD (pervasive development disorder, autism) child who has been through many difficulties of the Pa system since she was 2yrs old. I just wanted to let you be aware of what many parents are going through with the state system that are good or indifferent.

Deanna was born on April 4, 1994 a healthy baby, but by the age of 2 was noticed with a odd behavior of flicking her hands and was very low tone that she could not crawl as a baby. Deanna was then recommended by the doctor about an early prevention program (in Philadelphia), which came later after we exhausted our personal health insurance quota for the year, that brought her to a learning support center(placement was based on demographics) for 6 months that eventually my doctor, wife and I found was inadequate for her needs. This process of transfering her to another school was very difficult because we had to investigate and pry information from the present school and welfare office (Phila. county). Our child was then place at Ken Krest (learning support) in northeast Philadelphia where they did an adequate job, but were very conservative with giving her special needs help when her neroulogist was stating she needed more. Example, the doctor requested she receive three days of one on one speech therapy a week, but was offered only one day. The only way Deanna was able to get a little more(1/2 day) was by a child advocate of the state standing by our side at the IEP.

Deanna is currently in the Pottsgrove school system in a learning support that my wife and I debate many times about. The schools have to stop keeping a secret on what is available because of monetary reasons. Being that Deanna is a highly function (my wife and I are a fan of the state's early prevention program) autistic child and bordering a normal child, it is hard to know if she should be in an autistic program or a learning support. We are very torn between what the doctors' and educators' opions are. It seems to us that schools are cap out with money for these children and they try to give the minimum, when that child should be receiving more to reach his or her potentials.

During stages of early prevention for Deanna, we had a very difficult time receiving medical insurance from the welfare department because of my family's low middle class wages of four people at that time. My wife and I were informed (hear say) by our peers, the medical profession and school that special needs children automatically received medical cards at the welfare office. This became very evident that this was true after we twisted the representative's arm(the person was pleading ignorance) for information . Deanna did receive her medical card to go along side with our personal insurance (when exhausted) while living in Phildelphia. It was stated, when we moved, that we would have to apply for another card in Montgomery county. We do not have one currently. Why does anyone have to apply again and go through that stress, if you live in the same state which is paying for it?

The problem that many parents feel is that everything is a secret when it comes to getting aid for our children. If an educated middle class family is having a difficult time getting help for their children, could you imagine what poor uneducated families are going through? The system needs to be revamped so that no special needs child in the state pennsylvania is missed in: a diagnosed; medical insurance; early prevention; and proper education for that individual.

The families must be informed what is available, as soon as a child is considered special needs by the medical profession. The doctors are first in direct contact with the families and know what the child needs are. Maybe a child advocate could be available at all major hospitals like CHOP and Seashore? Help the family doctors and specialist by giving them direct access to information that in turn they can reciprocate to the parents. How about a dedicated website that the medical profession can access for families or give the names of an advocates that a family can contact in their particular community? Do know how many time we heard that they don't know what is available in our certain community?

My family and other families believe that Pennsylvania does care about their children and are making strides for the special needs. Pa does and will benefit from the money they spend for these children and will be blessed with kids who could lead productive lives and not be put in a state institution or something similiar. Parents and the state would not have to worry, as much, where these children will be placed in the future, because the child would have all the opportunities that will given to him or her for a chance in a better life.

Please consider this letter when writing laws and rights for special needs.

Thank you,
Pete and Nancy Robles
1309 Doris drive
Pottstown, PA 19464

Original: 2144

Peter and Elizabeth Bell
200 Lafayette Avenue
Oreland, PA 19075
215-884-3394
mailto:kallenbell@msn.com

RECEIVED
2000 OCT -5 AM 11:42
INDEPENDENT REGULATORY
REVIEW COMMISSION

September 19, 2000

Eugene Hickock, Secretary of Education
PA Department of Education
333 Market Street
Harrisburg, PA 17126

Dear Mr. Hickock:

We are the parents of three beautiful children, the eldest of whom regressed in his second year and disappeared down the slippery slope into Pervasive Developmental Disorder. Since his diagnosis at age three, we have battled to bring our son back to us. Tyler was on his way back, after countless 40-hour weeks of ABA, weekly speech and OT sessions and the dedicated labor of a qualified and collaborative team of professionals providing services through early intervention.

Upon transitioning to school age, we were told it was time for us to let go and 'trust' the school system. Aside from the IEP process, there was no programming transition, nor an opportunity to learn from the wealth of knowledge the EI providers had developed with respect to our son and his complicated learning style and needs. The school program that was described to us was only superficially in place at the beginning of the school year, and much of the outlined specially designed instruction was not instituted. Over the last year, we have found the school system to be anything but trustworthy. The LEA has violated almost every timing regulation set forth, failed to deliver the IEP and failed to issue prior written notice in response to our requests for information or program changes. Nine months since our request for increased mainstreaming and a change to appropriate educational methodologies, we still do not have an acceptable, signed IEP. We have had to jump up and down to have a regular education teacher included in our IEP team meetings. Only yesterday we received a copy of our son's 1999-00 year-end progress report, which indicates that he achieved a level of competency or mastery on only 22% of his IEP objectives.

We have attempted a variety of methods to encourage the LEA to provide an appropriate education for our son, eventually incurring considerable legal fees. We are currently awaiting the results of a complaint we registered with the Office of Special Education about these procedural violations, which have resulted in his starting the school year without an appropriate or defined program. While this report may deliver a statement about the LEA's lack of compliance, it does nothing to remedy the resultant harm to our child.

Even with the current Chapter 14 regulations setting forth very explicitly what the guidelines are, our LEA has repeatedly violated the spirit and content of IDEA and state regulations. Because of the existing regulations we know very well what our child's rights are; the LEA should also know this, and yet they continue to violate them. What will happen when the parameters are even less defined?

We find the thought of the state allowing open interpretation of IDEA and freedom of decision-making to local authorities unacceptable. Just as US Representative Charles Bass and others in Congress are showing their support for IDEA and their responsibility and commitment to special needs individuals, it is preposterous that the state of Pennsylvania would remove the existing protections.

Instead of creating vague parameters, we believe the state education agency has a responsibility to increase the level and specificity of protection afforded to these needy children, who are otherwise often placed in the LEE (least expensive environment.) While certain school districts have taken appropriate responsibility for the needs of their children, the vast majority is motivated by what is simplest, easiest and cheapest. We believe that the state should be working to ensure that the districts are in compliance with the parameters that are set forth, through increased involvement. Furthermore, we believe the state should provide increased review and supervision of the actions and decisions of officers of the Office of Dispute Resolution, as this area of dispute resolution appears to be fraught with inconsistencies and lack of adherence to regulations and case law.

We are the parents of a special needs child. Our resources are stretched to the limits, as we learn about and evaluate medical interventions, long-range options, support research efforts and labor every available moment with the children we love. It is heartbreaking to watch the child you worked so hard to bring back from the edge of an abyss begin to regress and slow his progression because of the inappropriate motivations of LEA personnel. While other parents go to our school board meetings and talk incessantly about getting the best education for their children, we are only allowed to ask for what is appropriate. Please give the school districts in this state direction, guidance and an admirable example in showing what an appropriate education actually is. Maintain the specific Chapter 14 regulations and add to them parameters that reflect the recent changes to IDEA and the tools that will allow our children to continue to grow, despite the many other challenges they face.

We appreciate your consideration.

Sincerely,

Peter and Elizabeth Bell

Peter H. Bell
Elizabeth K. Bell

Cc: State Board of Education, Independent Regulatory Review Commission
Governor Tom Ridge
Senator Stuart Greenleaf
Representative Eugene McGill

Original: 2144
September 19,2000

RECEIVED

2000 OCT -5 PM 3:16

INDEPENDENT REGULATORY
REVIEW COMMISSION

Kathy Mason
303 Hopkins Court
North Wales, PA 19454

Peter H. Garland
State Board of Education
333 Market Street
Harrisburg, PA 19126-0333

Dear Mr. Garland,

I am the Parent of a special education student at Gwynedd Square Elementary School in Lansdale, PA who has had the opportunity to take advantage of the current special ed provisions and feel these are vital tools to aide eligible students. My son has benefited greatly from the current regulations that have kept his class size small and permitted students with similar disabilities to access an appropriate program for their needs.

The proposed changes to Chapter 14 seem to represent a lack of concern for the legal and moral rights of our children to receive an appropriate education in the State of Pennsylvania. In particular, I feel that the recommendations proposed by your board represent a lack of appreciation for not only the needs of special ed students but also a total lack of regard for the entire educational system currently now in place. As such, I feel that your proposed recommendations should be amended as follows:

- Maximum class size and caseloads should remain as regulations.
- Class composition by disability should remain as a regulation.
- Maximum age range of students within a class should remain as a regulation.
- Parents should be allowed the choice of having a parent advocate attend IEP meetings for support.

Obviously, the current special ed system in place has many areas that need time and attention to improve upon. I feel the time of your committee could best be spent exploring ways to reinforce the school s programs so that they can provide quality education to truly deserving students. Some suggestions to address flaws in the current programming in a positive manner are as follows:

- What class size should there be when special needs children are included?
- What kind of support do regular education teachers need to assist special students in their class?
- Do you need an itinerant special ed teacher to trouble-shoot and give suggestions for program modifications?
- Should special in-service training be in place to service these children?
- How can the system promote more parent friendly IEP meetings fostering a true collaborative effort?

In summary, I feel that the elimination of the requirements limiting class sizes, compositions, and age ranges will produce undesirable and unintended consequences affecting the health and well being of the entire student population.

Sincerely,

Kathy Mason

Kathy Mason

Original: 2144

September 19, 2000

Connie Laubach
1035 Archer Lane
Lansdale, Pa. 19446

RECEIVED
2000 OCT -5 PM 3:13
REGULATORY
REVIEW COMMISSION

Peter H. Garland, Executive Director
State Board of Education
333 Market Street
Harrisburg, Pennsylvania 17126-0333

Re: Comments to draft of Chapter 14

Dear Mr. Garland and other Board Members,

I am writing once again to express my grave concerns regarding the revisions to Chapter 14 and 342 regulations. There seem to have been minimal changes, if any since January. I am a Speech – Language Pathologist and have spent over 25 years working with special needs children in the public school setting. I have seen many regulations and many changes come and go over the course of my career. Some have been welcomed as good legislation benefiting the educational needs of children with a variety of handicapping conditions. Others have been a burden to the process of meeting the needs of special education students. I have tried, as have my colleagues, to do my very best to meet regulations and provide services, an appropriate setting, and the appropriate level of of service needed to move children forward. The end goal being to assist children with special needs reach their potential as productive adult members of the local, regional and statewide communities.

The range of disability has increased greatly over the span of my career, as has the severity of disability. More and more children arrive in the public school system with complicated disabilities requiring an intense amount of programming and planning. The number of special education classes continues to increase. Speech and Language caseloads continue to increase in both numbers of students, and numbers of students with more severe disabilities. Due to the "looseness" in interpretation of caseload size for speech – language at the state level, the SLPs in the public school system are experiencing great difficulty in meeting regulations in a timely manner and providing appropriate levels of service to students.

The currently proposed caseload number of 65, while a step in the right direction, does not consider severity. A caseload of 65 with a majority of mild to moderately impaired students is not the same load as a caseload of 65 with the majority of students in the moderate to severe communicatively handicapped range. Nor is a caseload of 65 students with a number of augmentative devices the same level load.

The regular education students are currently at a disadvantage. These students are unable to access speech-language services in a timely fashion because the SLPs' schedules are full. Districts are very reluctant to spend the money to hire additional staff. Due to the unrealistic and ill defined "caseload size" at the state level, there is no incentive at the district level to secure additional staff to meet the growing needs of the students.

I live this on a daily basis. No one at the state level or at the local school board or administrative levels really has to live it. None of you face students daily. None of you are living the day-to-day reality of the state regulations currently in existence. Now you are pushing forward with a similar scenario for the other special education exceptionalities. I seriously doubt that any member of the current state board working on the revisions for Chapters 14 and 342 will have to "live" the consequences of their decisions –provide services in the midst of chaos. You are far too removed to actually understand the ramifications- to be daily and yearly truly accountable to children and their parents.

In your draft of revised Chapter 14, it is imperative that you reconsider your position in the following areas:

1. **Class Size**-KEEP MAXIMUM CLASS SIZE AND CASELOAD A REGULATION. Please do not give school districts the freedom to determine maximum class size. One does not need to wonder what districts would do. Class sizes would increase. An effective program for special education cannot happen in overcrowded classrooms.

2. **Class Composition**- KEEP THE CURRENT REGULATION. The current delineation for special learning styles must be kept as is, as a REGULATION. These special classes address different areas of need (speech – language, learning disability,emotional, etc.)

   While some similarities may exist across the exceptionalities, the primary disability most frequently dictates the types of teaching strategies required to address the learning needs. Even the most talented teachers cannot adequately meet the needs of children placed in mixed disabilities classrooms.

3. **Age Range within a Classroom**- KEEP THE 3-YEAR MAXIMUM SPAN A REGULATION. Curriculum bands, as well as social development need to be kept within a closer range. In regular education we do not daily instruct 5 year olds and 12 year olds in the same classroom. Why would it be appropriate in special education?

4. **Readability /Organization** - referring back to the Federal IDEA regulations is cumbersome, awkward, and confusing. The regulations need to be "user friendly for both parents and educators.

Items 1 – 3 represent the foundations for providing special education services. Without these in place as state regulations, programs cannot be successful. The dollars invested in educating special needs students will not be well spent. Taxpayers will be assuming an increased expenditure for these students in their adult years, which last far longer than their public school careers.

Regular education classes will be affected by the lack of firm regulations at the state level. We are in the midst of overcrowded classes, a wider range of ability levels, and increased number of students with learning and social problems. Add to this higher expectation for performance and jammed curriculums. It truly becomes a recipe for disaster when trying to integrate special education students into the mainstream. They may never make it to a mainstream class if their own special education classes end up the same size as the regular classes. Specially designed instruction and instructional strategies will exist only on paper. Students and educators will not be able to bridge the gaps in students' learning. What will be "special" about special education?

I again urge you and the other board members to reconsider your positions.

Thank you for your attention to these critical issues.

Sincerely,

Connie L. Laubach

Connie L. Laubach M.Ed., CCC-Sp/L

Original: 2144

5831 Wallace Avenue
Bethel Park, PA 15102
September 18 2000

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

RE Proposed Changes to State Special Education Regulations

Special Education regulations are not widely understood by parents, who are generally the individuals who must advocate for their children's rights within school districts. My experience is that most parents learn of their rights through a series of trial-and-error attempts to get their child's special needs met. Schools are not generally helpful to parents, and many children "fall through the cracks."

When parents do know their rights, dealing with school districts often becomes a source of sheer frustration as schools insist on relatively generic IEPs and watered-down versions of what kids actually need to succeed, and parents are presented with take-it-or-leave-it accomodations. Holding school districts accountable to follow an IEP is a full-time job for parents and the due-process recourse is both lengthy and expensive for parents to access.

The proposed changes do nothing to help this situation. A parent with a special needs child already has a full-time job, regardless of whether he or she is also employed outside the home. Expecting that parents will look up and understand the federal regulations referred in the proposed regulations is ridiculous. This is one further step to keep parents in the dark and districts a step ahead in their efforts to minimize special ed services

Using terminology like "as soon as possible" gives districts every time advantage and parents and children none. As it is, enforcing a given time limit requires parents to know that it exists and letting the district know that they expect it to be honored. Using nebulous terminology puts more discretion in the district's hands.

Holding schools accountable for providing a free and appropriate public education is already a formidable task, particularly for parents already without adequate resources (knowledge, education, finances, time, etc.). Regulations must improve in clarity and enforcement to benefit children, not school districts.

Sincerely,

Susan A. Sholtis

Susan A. Sholtis

RECEIVED
2000 SEP 26 AM 9:09
INDEPENDENT REGULATORY
REVIEW COMMISSION

Original: 2144

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

September 18, 2000

RECEIVED
2000 SEP 20 AM 8:41
[illegible] REGULATORY
REVIEW COMMISSION

Mr. Peter H. Garland
Executive Director
State Board of Education
1st Floor, Harristown 2
333 Market Street
Harrisburg, PA 17126-0333

RE: Proposed Chapter 14 Regulations

Dear Mr. Garland:

The Pennsylvania Catholic Conference ("PCC") has reviewed the proposed Chapter 14 regulations (relating to Special Education Services and Programs), which have been published at 30 *Pa. Bulletin*, 4628, *et seq*. PCC's review focused on the provisions which might affect nonpublic school children.

PCC had previously commented on an earlier draft of the proposed regulations, and, because the regulations are substantially the same in all pertinent respects as that earlier draft, must reiterate its views as previously expressed.

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 LEAs.

The Public Affairs Agency of the Catholic Dioceses of Pennsylvania Since 1960
www.pacatholic.org

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 regarding the adequacy of services offered to them (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. That obligation was recently given strong reinforcement by the decision of the United States District Court in the case of *John T. v. Delaware County Intermediate Unit*, 2000 WL 558582 (E.D.Pa. May 8, 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.

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 aforementioned 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 contain a reference to §502 as providing a base of statutory authority for the regulations. That reference is not present in the proposed regulations. PCC believes that the proposed regulations should make some specific provisions for dual enrollment options for nonpublic school children.

Under the proposed regulations (§14.132(1)), LEA's would be responsible for considering the need for extended school year services for each eligible student (which would presumably include nonpublic school students) "at each IEP meeting." Eligible students with disabilities are entitled to extend 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 and intermediate units to dispute the eligibility of nonpublic school students for the services, given that nonpublic school students do not receive IEPs. Consequently, we believe that the regulations should also accommodate nonpublic school children who have "services plans" (34 CFR §300.452) and are in need of extended school year services.

With respect to early intervention services, PDE would be required to ensure that alternative placements are available to meet the needs of children eligible for early intervention. (§14.155(a)). These alternative placements may be made available directly by school districts and IUs or through contractual arrangements for services and programs of other agencies in the community, including preschools, provided the services are "appropriately licensed" by PDE or DPW. Religiously-affiliated nonpublic preschools (which are not required to be "licensed" under Article IX of the Public Welfare Code or under the Private Academic Schools Act, and which have constitutional objections to regulation of their programmatic elements) could therefore not serve as alternative placement sites for children who require early intervention services, unless those preschools forfeited their statutory and constitutional exemptions from licensure. PCC objects strongly to such a licensure requirement for religious ministries.

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.

Very truly yours,

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

cc: Independent Regulatory Review Commission ✓

Original 2144

GORDON R. HODAS, M.D.
214 EAST GRAVERS LANE
PHILADELPHIA, PENNSYLVANIA 19118
TELEPHONE: (215) 247-1707

RECEIVED
2000 SEP 22 AM 8:44
INDEPENDENT REGULATORY
REVIEW COMMISSION

September 18, 2000

Dr. Peter Garland
Executive Director
State Board of Education
333 Market Street
Harrisburg, PA 17126-03333

Dear Dr. Garland,

I am writing to express my hope that the State Board of Education will ultimately decide to maintain Pennsylvania's Special Education Regulations in their current form. I have become familiar with these regulations in my roles, for the last 8 years, as child psychiatric consultant to the Office of Mental Health and Substance Abuse Services (OMHSAS) and as psychiatric consultant to an approved private school in Southeast Pennsylvania. Pennsylvania's Special Education Regulations are actually a standard for the nation, and I have repeatedly seen how reassuring they are to parents already overwhelmed by the uncertainty created by their child with special needs. At the same time, these Regulations, in my experience, can be realistically met without undue hardship by the public schools. In fact, I believe that the Regulations, by virtue of their structure and clarity, serve to diminish conflict between parents and schools and actually move both parties toward mutually acceptable outcomes.

Federal regulations typically tend to be more general that state regulations, with the presumption that state regulations will fill in missing elements through their own specificity. This, in fact, is the function of Pennsylvania's current Special Education Regulations. In my opinion, it would be unfortunate if specified timelines were eliminated, along with the expectation that a behavior support plan be developed for any child receiving special education services, whether or not that child is designated as SED. Other current state regulations are also still needed, including those related to caseloads for special education classes.

Whether or not they end up writing to the Commission, many families are greatly concerned about the need to maintain Pennsylvania's current Special Education Regulations. I add that, as someone working internally "within the system," it is most uncommon for me to write a letter such as this one. However, I feel it necessary to offer my voice in support of a part of our system that is working effectively and needs to be preserved.

Sincerely,
Gordon R Hodas MD
Gordon R. Hodas MD

Cc Independent Regulatory Review Commission

Original: 2144

4506 Eland Downe
Phoenixville, PA 19460

RECEIVED
2000 SEP 20 AM 8:40
INDEPENDENT REGULATORY
REVIEW COMMISSION

September 18, 2000

Independent Regulatory
Review Commission
14th floor
333 Market St.
Harrisburg, PA 17126-0333

To whom it may concern:

I am writing regarding the proposed changes to Chapter 14. I am seriously concerned that the State would choose to make recommendations instead of regulations to safeguard our children's education. This is a population of children that most need our attention.

Parents need to be able to advocate for their children. The new Chapter 14 will be virtually impossible for parents to understand. It makes constant reference to the complex federal regulations. These regulations are generally not available to families. I previously worked as a school psychologist and saw first hand that school districts will do as little as possible. To allow school districts to set their own teacher caseload will create serious problems. Poorer districts will increase class sizes to save money. While this may seem fiscally sound in the short term, this would be a detriment to these children's education and will cost us all in the future. To say that services in an IEP should be implemented "as soon as possible" could cost children valuable time getting services started. The time frame must be specific such as the current 10 days.

For children with behavior disorders, it is imperative that behavior plans be incorporated in the IEP. Inconsistent responses or lack or appropriate responses will maintain and increase the inappropriate behavior and negatively impact the education of these children.

Children in the care of the state also need to be ensured of someone to advocate for them. Just because they are no longer in the care of their families does not me that that their education should suffer.

Please do not eliminate the regulation that sets the range of services for children. Parents need to be aware of the choices that they have for placement. Schools need to be mandated to provide a variety of programs to ensure children are educated in the least restrictive environment in which they are capable of learning. Parents should also be able to visit their child's school and classroom to ensure consistency across environments.

Finally, I feel it would be irresponsible to reduce eligibility for Early Intervention programs. I realize that expense is always an issue but early intervention is the first step in reducing services later in the child's education. This, again, will cost more in the future. It is also important to create regulations to make sure that the transition from early intervention into IU programs is "smooth".

Children, even children with special needs, are our most precious resource. Please do not sacrifice their education.

Sincerely,

Denise Ehner

Denise Ehner

CC:
Dr. Peter Garland, Executive Dir. State Board of Ed.

Eugene Hickock, Secretary of Education

Gov. Tom Ridge

Original: 2144

September 18, 2000

RECEIVED
2000 OCT -5 PM 3:16
REGULATORY
REVIEW COMMISSION

Peter H. Garland, Executive Director
State Board of Education
333 Market Street
Harrisburg, PA 17126-0333

Re: Comments to Draft of Chapter 14

Dear Mr. Garland:

I am a parent of an eleven year old sixth grade girl who has prospered from the present state regulations (Chapters 14 and 342). My daughter entered the learning support program three years ago within the public school system. Because of the clearly defined regulations, the school district and I have worked well together.

We look to the State Board of Education for regulations and not mere recommendations. Without clearly defined instructions, tasks will be overlooked, and the end result will be our innocent children suffering. We must have high expectations and provide environments and programs for our children to reach their potential. With these resources, most of these children will rise to success.

In your draft of revised Chapter 14, please seriously reconsider your position in the following areas:

1. **Class Size**—Please do not give school districts the freedom to determine maximum class size. Keep maximum class size and caseload a regulation. Effective learning does not occur in overcrowding.

2. **Class Composition**—Please keep the special learning style classrooms as delineated in the present Chapter 14 regulations a regulation. These classes service different areas of need that can not be met by a teacher if you mix the learning styles.

3. **Age Range Within a Classroom**—Please keep the three year maximum age range as stated in the present Chapter 14 regulations a regulation.

4. **Readability/Organization**—Please try to make the regs more user friendly to parents and educators. Referring back to the Federal IDEA regulations is awkward.

I also request that you consider **adding** the following regulations.

1. Add a classroom type called "inclusion" and designate a maximum caseload (regular + eligible students) for the regular ed teacher.

2. One trained parasupport person for every four eligible students within that regular education classroom.

3. An itinerant special education teacher should observe, trouble-shoot, and aid the classroom teacher with modifications to the general curriculum.

Thank you for your time and attention to my concerns. The present regulations in Chapters 14 and 342 are working in Pennsylvania. The content of these regulations needs to be kept in place in order to continue providing protection for our children. Please support my concerns .

Very truly yours,

Stephen Howard

Stephen M. Howard
917 Tricorn Drive
Lansdale, PA 19446
610-584-0152

Original; 2144

ANNA & MICHAEL FILMYER
325 TYSON AVENUE
GLENSIDE, PA 19038

RECEIVED
2000 SEP 26 AM 9: 10
INDEPENDENT REGULATORY
REVIEW COMMISSION

September 18, 2000

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

Dear Dr. Garland,

We are writing to express our concerns regarding the proposed changes to the state special education regulations. (Chapter 14, dated September 2, 2000). These concerns include:

1) The proposed regulations offer no guidance on how local education agencies are to implement federal requirements. It seems to "leave it up to the districts". This is a large concern, for the goal of a school district is not necessarily in tune with the needs of persons with disabilities.

2) The proposals should incorporate existing requirements from Basic Education Circulars (BECs). These memos serve as guidelines to the school districts on how to interpret state and federal requirements. By not "codifying" the BECs, the school districts are free to interpret the law as they like, perhaps to the detriment of the student.

3) Why are the federal regulations incorporated by reference only? Who does this benefit? The school districts only! They have retained solicitors who have easy access to these regulations. Parents, on the other hand, simply have another hurdle to leap in order to advocate for their child.

4) Please reinstate the definitions of "appropriate program", "change of placement" and "eligible young child". Why were these definitions eliminated or narrowed? Simply to give the local school districts more power to push through their own agendas, and weaken the position of perhaps the weakest segment of our society, disabled children.

5) The regulations must be changed back to require services found on the IEP to be implemented within 10 days. The proposed change to "as soon as possible" is an invitation by the district to drag their feet and delay as long as possible.

The recurring theme in the above items, concern the tendency to give the local education agency power to "do anything they would like" under the guise of interpreting the federal laws. These regulations basically strip the power of individuals to fight for their rights, and allow school districts to do the minimum they can do to get by, since, they will be the ones interpreting the federal laws. Parent and individual rights will mean next to nothing. Parent and disabled members of our society will be unable to mount legal challenges to the districts, since it will now be prohibitively expensive to mount a legal case, since the state guidelines have been gutted.

As parents of a young child with Autism, we ask why? The answer is obvious, we feel that the State Board of Education is bowing to *political and fiscal* pressures from local educational agencies and is preparing to eliminate many rights that students and parents currently hold. We urge you to modify the proposed regulations and reinstate the current rights that will be lost.

Sincerely,
Michael R. Filmyer
Michael R. Filmyer
Anna M. Filmyer
Anna M. Filmyer

cc: Rep. Ellen Bard, 153rd Legislative District
Hon. Thomas Ridge, Governor
Eugene Hickok, Secretary of Education
Independent Regulatory Review Commission

In these days it is doubtful that any child can succeed in life if he is denied the opportunity of an education. Such an opportunity . . . is a right which must be made available to all on equal terms.

Brown v. Board of Education
United States Supreme Court (1954)

Original: 2144

RUTHANN QUIGLEY
119 LYNNWOOD AVENUE
GLENSIDE, PA 19038

September 18, 2000

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

Dear Dr. Garland,

I am an aunt of a young boy with Autism, and I am very concerned about the proposed changes in the special education regulations. As an advocate for my nephew and other autistic children, I urge you to modify the proposed regulations and reinstate current rights that will be lost if the changes are approved. I don't believe the current system is "broken" therefore it doesn't need "fixing". The proposed regulations will substantially weaken the position that the parents have in directing the education of their son. These regulations basicly give the school district the "upper hand" in planning educational programs for the child. In the case of children with disabilities, the parents should be an equal partner on the IEP team.

Very truly yours,

Ruth Ann Quigley

Ruth Ann Quigley

RECEIVED
2000 OCT -5 PM 3:16
REGULATORY
REVIEW COMMISSION

Original: 2144

RECEIVED
2000 OCT -5 PM 3:14
INDEPENDENT REGULATORY
REVIEW COMMISSION

John K. Naudasher
826 W. 3rd St.
Lansdale, Pa. 19446

9/18/00

Re: Chapter 14 revisions to special ed. regulations

Dear Sir or Madam:

I am the parent of two boys, currently in need of an IEP to deal with their neurological disorder (PDD), which is a type of delayed development syndrome. Smaller class sizes have benefited both until now. One progressed more rapidly as far as self-help skills, higher level thinking, social interaction etc., and moved on to larger class sizes in a mainstream setting (with support available). There are still problems today, when he withdraws from activities due to the nature of his disability, it is not evident to the mainstream classroom teacher what the nature of the problem is! By the time I receive a report saying my child is not participating or turning in work, the damage has already been done. These children need encouragement and support, in order to establish self-esteem, understanding of the most basic concepts, good work habits, and a feeling of belonging! Age appropriate class settings help to develop the peer interaction that is essential to personal development. Behavior sometimes needs to be unlearned as well as learned, when grouping children with disabilities. This is also critical, in my experience.

The level of support my sons have received to date, was much higher in the early grades. This is where the most progress was shown! Through middle school, the blueprint for support was less structured, and required many more conferences with teachers and supervisors, to garner the level of support needed to move forward with the curriculum. Now in High School, my sons' teachers all have voice mail, and are rarely available to confer. It is difficult to assess their progress without direct communication! I would stress that we need to assure a certain level of support, as an investment in what can be productive, active, confident members of our community; having benefited from the foresight and leadership you can provide!

Please do not take a step backward from the essential levels of detail that are needed to assure that all of our children are recognized as individuals, and not simply a component of some national statistic!

Sincerely,

John K. Naudasher

Original: 2144

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

September 18, 2000

RECEIVED
SEP 1 9 2000
PA. STATE BOARD
OF EDUCATION

Mr. Peter H. Garland
Executive Director
State Board of Education
1st Floor, Harristown 2
333 Market Street
Harrisburg, PA 17126-0333

RE: Proposed Chapter 14 Regulations

Dear Mr. Garland:

The Pennsylvania Catholic Conference ("PCC") has reviewed the proposed Chapter 14 regulations (relating to Special Education Services and Programs), which have been published at 30 *Pa. Bulletin*, 4628, *et seq.* PCC's review focused on the provisions which might affect nonpublic school children.

PCC had previously commented on an earlier draft of the proposed regulations, and, because the regulations are substantially the same in all pertinent respects as that earlier draft, must reiterate its views as previously expressed.

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 LEAs.

The Public Affairs Agency of the Catholic Dioceses of Pennsylvania Since 1960
www.pacatholic.org

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 regarding the adequacy of services offered to them (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. That obligation was recently given strong reinforcement by the decision of the United States District Court in the case of *John T. v. Delaware County Intermediate Unit*, 2000 WL 558582 (E.D.Pa. May 8, 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.

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 aforementioned 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 contain a reference to §502 as providing a base of statutory authority for the regulations. That reference is not present in the proposed regulations. PCC believes that the proposed regulations should make some specific provisions for dual enrollment options for nonpublic school children.

Under the proposed regulations (§14.132(1)), LEA's would be responsible for considering the need for extended school year services for each eligible student (which would presumably include nonpublic school students) "at each IEP meeting." Eligible students with disabilities are entitled to extend 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 and intermediate units to dispute the eligibility of nonpublic school students for the services, given that nonpublic school students do not receive IEPs. Consequently, we believe that the regulations should also accommodate nonpublic school children who have "services plans" (34 CFR §300.452) and are in need of extended school year services.

With respect to early intervention services, PDE would be required to ensure that alternative placements are available to meet the needs of children eligible for early intervention. (§14.155(a)). These alternative placements may be made available directly by school districts and IUs or through contractual arrangements for services and programs of other agencies in the community, including preschools, provided the services are "appropriately licensed" by PDE or DPW. Religiously-affiliated nonpublic preschools (which are not required to be "licensed" under Article IX of the Public Welfare Code or under the Private Academic Schools Act, and which have constitutional objections to regulation of their programmatic elements) could therefore not serve as alternative placement sites for children who require early intervention services, unless those preschools forfeited their statutory and constitutional exemptions from licensure. PCC objects strongly to such a licensure requirement for religious ministries.

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.

Very truly yours,

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

cc: Independent Regulatory Review Commission

Original: 2144

RECEIVED
2000 OCT -5 PM 3:15
INDEPENDENT REGULATORY
REVIEW COMMISSION

September 18, 2000

Peter H Garland, Executive Director
State Board of Education
333 Market Street
Harrisburg, PA 17126-0333

RE: Comments to Draft of Chapter 14

Dear Mr Garland and Board Members:

I have two daughters, ages 10 and 12, who are currently in grades 5 and 7. My daughters are both very bright but also have learning disabilities. It was because of the current state regulations, Chapters 14 and 342, that I was able to have my daughters' disabilities addressed by the school district. My children are taught in the regular classroom, but also receive learning support services based on their individual needs.

I would like to express my concern over the draft of revised Chapter 14. It has been my experience that the specific regulations in the present Chapter 14 are what help children get the support that they need today. When mere recommendations are made, as proposed in the draft, it gives school districts the ability to stray from the recommendations – likely at the expense of the children.

I urge you to seriously reconsider your position on the following issues:

Class Size – Maximum class size and caseload must be mandated via regulation! If school districts have the freedom to determine maximum class size, I believe they will continue to increase the size of the classes. I have first hand experience with my children and the effect of class size on their school performance. There is no doubt that larger class sizes have a negative impact on the quality and outcome of a child's education.

Age Range within a Classroom – I urge you to keep the 3 year maximum age range as stated in the present Chapter 14 regulations. Again, if age range is a mere recommendation, school districts will likely move to larger age ranges within a classroom. This must be a specific regulation.

Missing from the draft are regulations for eligible students included in the regular education classroom. This issue must be addressed. Again, I have first hand experience with my own children being in the regular classroom with as many as 30 classmates. The regular teacher cannot, and does not, provide adequate instructional assistance to eligible students in this type of classroom setting. Regulations are needed regarding class size and support personnel for the inclusion method. Please consider adding regulations for a classroom type called "inclusion" and designate a maximum caseload for the regular education teacher. A formula to weight disabilities within the caseload should be used. Additionally, there should be one trained support person for every 4 eligible students within the regular education classroom.

I would like to thank you for your time and consideration regarding these important issues. The present regulations in Chapter 14 and 342 are working in Pennsylvania; and the content of these regulations must be kept intact. Changing the regulations would likely result in weaker protection for our children and their educational needs. Please provide your support in helping our children get the best possible education.

Sincerely,

Mary McLaughlin

Mary McLaughlin
730 Garfield Avenue
Lansdale, PA 19446
215-699-6786

Original: 2144

September 18, 2000

RECEIVED
2000 OCT -5 PM 3:16
INDEPENDENT REGULATORY
REVIEW COMMISSION

Peter H. Garland, Executive Director
State Board of Education
333 Market Street
Harrisburg, PA 17126-0333

Re: Comments to Draft of Chapter 14

Dear Mr. Garland:

I am a parent of an eleven year old sixth grade girl who has prospered from the present state regulations (Chapters 14 and 342). My daughter entered the learning support program three years ago within the public school system. Because of the clearly defined regulations, the school district and I have worked well together.

We look to the State Board of Education for regulations and not mere recommendations. Without clearly defined instructions, tasks will be overlooked, and the end result will be our innocent children suffering. We must have high expectations and provide environments and programs for our children to reach their potential. With these resources, most of these children will rise to success.

In your draft of revised Chapter 14, please seriously reconsider your position in the following areas:

1. **Class Size**—Please do not give school districts the freedom to determine maximum class size. Keep maximum class size and caseload a regulation. Effective learning does not occur in overcrowding.

2. **Class Composition**—Please keep the special learning style classrooms as delineated in the present Chapter 14 regulations a regulation. These classes service different areas of need that can not be met by a teacher if you mix the learning styles.

3. **Age Range Within a Classroom**—Please keep the three year maximum age range as stated in the present Chapter 14 regulations a regulation.

4. **Readability/Organization**—Please try to make the regs more user friendly to parents and educators. Referring back to the Federal IDEA regulations is awkward.

I also request that you consider **adding** the following regulations.

1. Add a classroom type called "inclusion" and designate a maximum caseload (regular + eligible students) for the regular ed teacher.

2. One trained parasupport person for every four eligible students within that regular education classroom.

3. An itinerant special education teacher should observe, trouble-shoot, and aid the classroom teacher with modifications to the general curriculum.

Thank you for your time and attention to my concerns. The present regulations in Chapters 14 and 342 are working in Pennsylvania. The content of these regulations needs to be kept in place in order to continue providing protection for our children. Please support my concerns .

Very truly yours,

Maureen M. Howard

Maureen M. Howard
917 Tricorn Drive
Lansdale, PA 19446
610-584-0152

Original: 2144

GORDON R. HODAS, M.D.
214 EAST GRAVERS LANE
PHILADELPHIA, PENNSYLVANIA 19118

TELEPHONE: (215) 247-1707

September 18, 2000

Dr. Peter Garland
Executive Director
State Board of Education
333 Market Street
Harrisburg, PA 17126-03333

Dear Dr. Garland,

I am writing to express my hope that the State Board of Education will ultimately decide to maintain Pennsylvania's Special Education Regulations in their current form. I have become familiar with these regulations in my roles, for the last 8 years, as child psychiatric consultant to the Office of Mental Health and Substance Abuse Services (OMHSAS) and as psychiatric consultant to an approved private school in Southeast Pennsylvania. Pennsylvania's Special Education Regulations are actually a standard for the nation, and I have repeatedly seen how reassuring they are to parents already overwhelmed by the uncertainty created by their child with special needs. At the same time, these Regulations, in my experience, can be realistically met without undue hardship by the public schools. In fact, I believe that the Regulations, by virtue of their structure and clarity, serve to diminish conflict between parents and schools and actually move both parties toward mutually acceptable outcomes.

Federal regulations typically tend to be more general that state regulations, with the presumption that state regulations will fill in missing elements through their own specificity. This, in fact, is the function of Pennsylvania's current Special Education Regulations. In my opinion, it would be unfortunate if specified timelines were eliminated, along with the expectation that a behavior support plan be developed for any child receiving special education services, whether or not that child is designated as SED. Other current state regulations are also still needed, including those related to caseloads for special education classes.

Whether or not they end up writing to the Commission, many families are greatly concerned about the need to maintain Pennsylvania's current Special Education Regulations. I add that, as someone working internally "within the system," it is most uncommon for me to write a letter such as this one. However, I feel it necessary to offer my voice in support of a part of our system that is working effectively and needs to be preserved.

Sincerely,
Gordon R Hodas MD
Gordon R. Hodas MD

Cc Independent Regulatory Review Commission

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[illegible]
PA STATE BOARD
OF EDUCATION

Original: 2144

RECEIVED

2000 SEP 26 AM 8:59

INDEPENDENT REGULATORY
REVIEW COMMISSION

Mr. & Mrs. Anthony L. Sherman
1142 Beech Street
Pottstown, PA 19464
September 17, 2000

Governor Thomas Ridge
Main Capitol Bldg.
Room 225
Harrisburg, PA 17120

Dear Governor Ridge,

We are writing to you as concerned parents of a special needs son. We wanted to tell you just how imperative it is that the educational needs or our son, Grant, be met as completely and conscientiously as possible. Just as special children need solid structure and organization in order to learn so, too, do the governmental regulations regarding their education need to be concise, intelligible, thorough and complete across all levels.

Grant has not one, but three distinct diagnoses working against him: bilateral cleft lip and palate, severe binaural hearing impairment and Pervasive Developmental Delay/Autistic Spectrum Disorder – Not Otherwise Specified. All three of these diagnoses predispose Grant to require specialized classroom settings which he will need for the majority of his lifetime. Only if these specialized classrooms are available and kept properly organized and maintained can there be any hope for Grant, and many other special needs children, to attain the best quality of life possible. Only with the appropriate classroom environment can Grant and his peers gain valuable life skills and the educational basics that will enable them to achieve a semblance of a normal, independent existence. Up until recently, these classrooms were available to our special needs children. Now these classrooms are in danger of being swept under a camouflaging carpet calling itself a new regulatory proposal. (See Sections 14.102 and .103)

If this proposal goes through, it will successfully mask those directions, instructions and guidelines that are especially necessary to the educators, parents and advocates of special needs children. Once these written outlines become an unintelligible melange of meaningless numbers they will be rendered useless to those who must use them. How are local school officials, most with little background in special education, to control class size, structure and age range? How can they implement behavioral programs for those children whose education is directly affected by such problems? How do they draw up IEPs for the students or stipulate the number of and/or the very existence of special needs classrooms within their school district? When the classrooms are made available, how will the parents gain access to them for their children?

Existing federal rules are not structured in the expectation that each state will interpret them and take from them whatever they wish. This is the equivalent of placing a special needs child into a mainstream classroom and expecting him to take "whatever education you can get" from it. Just as that child will be doomed to fail out of frustration and the inability to process what he is taught; so, too, will the passing of this proposal or "irregular regulations" be doomed to failure. This failure will come not only at the expense of the state, the educators and the parents but, most critically of all, it will come at the expense of all the educable but overlooked special needs children.

Governor Ridge, ask yourself this question: If MY child had special needs, would I want the best possible quality of life for him? Or would I permit my state and federal government to sweep his needs aside and ignore him? Look deep into your heart and soul and put a stop to the passing of this proposal. Please!

Yours truly,
Anthony L. Sherman
Lisa Ann Sherman
Anthony L. and Lisa Ann Sherman (on behalf of Anthony G. Sherman)

Cc: Secretary Eugene Hickok, PA Department of Education
Independent Regulatory Review Commission

Original 2144

4506 Eland Downe
Phoenixville, PA 19460

RECEIVED
SEP 20 2000
PA. STATE BOARD
OF EDUCATION

September 18, 2000

Dr. Peter Garland
Executive Director, State Board of Education
333 Market St.
Harrisburg, PA 17126-0333

Dear Dr. Garland,

I am writing regarding the proposed changes to Chapter 14. I am seriously concerned that the State would choose to make recommendations instead of regulations to safeguard our children's education. This is a population of children that most need our attention.

Parents need to be able to advocate for their children. The new Chapter 14 will be virtually impossible for parents to understand. It makes constant reference to the complex federal regulations. These regulations are generally not available to families. I previously worked as a school psychologist and saw first hand that school districts will do as little as possible. To allow school districts to set their own teacher caseload will create serious problems. Poorer districts will increase class sizes to save money. While this may seem fiscally sound in the short term, this would be a detriment to these children's education and will cost us all in the future. To say that services in an IEP should be implemented "as soon as possible" could cost children valuable time getting services started. The time frame must be specific such as the current 10 days.

For children with behavior disorders, it is imperative that behavior plans be incorporated in the IEP. Inconsistent responses or lack or appropriate responses will maintain and increase the inappropriate behavior and negatively impact the education of these children.

Children in the care of the state also need to be ensured of someone to advocate for them. Just because they are no longer in the care of their families does not me that that their education should suffer.

Please do not eliminate the regulation that sets the range of services for children. Parents need to be aware of the choices that they have for placement. Schools need to be mandated to provide a variety of programs to ensure children are educated in the least restrictive environment in which they are capable of learning. Parents should also be able to visit their child's school and classroom to ensure consistency across environments.

Finally, I feel it would be irresponsible to reduce eligibility for Early Intervention programs. I realize that expense is always an issue but early intervention is the first step in reducing services later in the child's education. This, again, will cost more in the future. It is also important to create regulations to make sure that the transition from early intervention into IU programs is "smooth".

Children, even children with special needs, are our most precious resource. Please do not sacrifice their education.

Sincerely,

Denise Ehner

Denise Ehner

CC:
Independent Regulatory Review Comission

Eugene Hickock, Secretary of Education

Gov. Tom Ridge

Original 2144

407 Weldon Drive
York, PA 17404

RECEIVED
2000 SEP 22 AM 8:40
INDEPENDENT REGULATORY
REVIEW COMMISSION

September 15, 2000

Mr. Mel Knowlton
Office of Mental Retardation
P.O.Box 2675
Harrisburg, PA 17101

Re: Proposed changes in State Special Education Services and Programs, and Early Intervention regulations

Dear Mr. Knowlton:

I have been a speech/language pathologist serving youngsters, primarily birth to school age, for 28 years. I have particular expertise in the field of hearing loss. I have been privileged to be employed by two long standing non-profit agencies, who came into existence for the sole purpose of enabling disabled youngsters and their families, well before government mandates concerning services to these children were enacted. In order to be in compliance as regulations currently stand, I have had to decrease the quality of my service to these families. I worry to think what erosion the proposed new standards will cause. Parents of infants in trouble are in crisis. They do not have the luxury of hoping what is recommended to them is in actuality the "best practice" for their child.

In Lancaster County, where I am currently employed, the service coordinators are trained, not educated. They tell parents that any speech therapist is equally capable. All good therapists find a niche in which their expertise is greater than other areas of the field. Therapy domains are too vast for any one person to be expert in all areas. Currently children are assigned to providers not on the basis of therapist skills but on geographical accessibility. (I formerly worked in York County where the service coordinators routinely took an active approach in matching particular therapists to particular families. I continue to receive phone calls from York/Adams SCs asking pertinent information in order to make a good placement.)

Our current contract with MH/MR prohibits the therapist from sharing her expertise with a family without running it by the service coordinator first. This is cumbersome and keeps the therapist from giving information when the family needs to hear it. We are frequently not consulted with regard to frequency and duration of service. This sometimes puts me at odds with my ASHA ethical standards. Duration and frequency can be longer or shorter than necessary. I am the department head at my agency. One of may staff followed proper channels, and requested that the SC discuss reducing duration with the child's mother. The service coordinator then chastised the therapist for not doing the job correctly. She was sure that my staff could not be doing the job right in less time. The government pays for this lack of efficiency.

I have sat in an IFSP meeting where only positive things are said about a child (We are not allowed to report how the child is actually functioning) only to have the SC announce that the child qualifies for waiver funding. The SC was totally unable to explain how anything called a "waiver" could be beneficial to the family. She also couldn't explain how if the child was doing so well, she suddenly had a 50% delay.

Currently SCs are trying to encourage one therapist to be the child's generalist therapist, handling ST, OT, PT, Special Instruction, etc. Most of us, who have been in practice for a while, have vast experience working with other domains, but we are not PTs and OTs. Parents have no idea that they are not receiving adequate service, because they are told that this is "best practice". By the time they figure it out, the child is exiting one funding stream for another set of regulations by another government department. The undefined concept of "early interventionist" scares me to death.

I know excellent speech therapists who don't know diddlysquat about hearing loss because it is a low incidence disability. How could an early interventionist hope to help a family dealing with a deaf baby? The ill conceived independent evaluation team also places a family dealing with a low incidence disability at risk for receiving inadequate or wrong information at a time when they are in crisis and need good information the most. Someone knowledgeable about the particular disorder should evaluate a child. The independent team is usually made up of qualified therapists, who give general information to a family, at a time when the family needs specifics.

Families are also in crisis when they leave the touchy-feely world of the IFSP and have their first intermediate unit MDE. Suddenly, all of those areas of deficit, which could not be mentioned in the only positive reports for MH/MR, are revealed. Parents are frequently shell shocked, and feel betrayed, not by the SC, but by the therapist who was in their home every week, and didn't (was allowed by contract) give them complete information. The child's strengths are paramount in the therapy process, but weakness must to allowed to be identified.

To meet the needs of travel time, we have hired several new staff, frequently right out of training. They have no idea that they will be stranded in homes. Because center-based services have been demonized by EITA, these new clinicians have decreased opportunity to be mentored. It is difficult to provide good consultative and family directed therapy if you have never had the opportunity to acquire a "bag of tricks" by learning from more seasoned mentors.

I highly resent the tone of most EITA "trainings". I always made the family part of therapy – long before the government came up with this "best practice" idea. I never left a parent alone in a lobby, while I stole their child away for therapy. (The lobby was a wonderful, natural place for families having similar needs to share ideas and give each other support, however.)

The proposed changes to early intervention are worrisome because of the apparently purposeful lack of definitions. We currently function at the whim of "Bulletins" that indicates how certain vague parts of the current law are being interpreted. I have worked on both sides of the Susquehanna River. The difference in interpretation between the two counties is unbelievable.

Thank you for the opportunity to share my concerns. I am available for further comment if asked. We assume no reprisals will come to those who voice their concern. My agency already bends to the whim of MH/MR with regard to referrals, no matter how high our quality of service and reputation.

Very truly yours,

Dorlas L. Riley, MS CCC/SLP

Cc: Robert Nyse
Independent Regulatory Review Commission
333 Market Street
Harrisburg, PA 17101

ANNA & MICHAEL FILMYER
325 TYSON AVENUE
GLENSIDE, PA 19038

Original: 2144

September 18, 2000

RECEIVED
2000 OCT -5 PM 3:15
REVIEW COMMISSION

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

Dear Dr. Garland,

We are writing to express our concerns regarding the proposed changes to the state special education regulations. (Chapter 14, dated September 2, 2000). These concerns include:

1) The proposed regulations offer no guidance on how local education agencies are to implement federal requirements. It seems to "leave it up to the districts". This is a large concern, for the goal of a school district is not necessarily in tune with the needs of persons with disabilities.

2) The proposals should incorporate existing requirements from Basic Education Circulars (BECs). These memos serve as guidelines to the school districts on how to interpret state and federal requirements. By not "codifying" the BECs, the school districts are free to interpret the law as they like, perhaps to the detriment of the student.

3) Why are the federal regulations incorporated by reference only? Who does this benefit? The school districts only! They have retained solicitors who have easy access to these regulations. Parents, on the other hand, simply have another hurdle to leap in order to advocate for their child.

4) Please reinstate the definitions of "appropriate program", "change of placement" and "eligible young child". Why were these definitions eliminated or narrowed? Simply to give the local school districts more power to push through their own agendas, and weaken the position of perhaps the weakest segment of our society, disabled children.

5) The regulations must be changed back to require services found on the IEP to be implemented within 10 days. The proposed change to "as soon as possible" is an invitation by the district to drag their feet and delay as long as possible.

The recurring theme in the above items, concern the tendency to give the local education agency power to "do anything they would like" under the guise of interpreting the federal laws. These regulations basically strip the power of individuals to fight for their rights, and allow school districts to do the minimum they can do to get by, since, they will be the ones interpreting the federal laws. Parent and individual rights will mean next to nothing. Parent and disabled members of our society will be unable to mount legal challenges to the districts, since it will now be prohibitively expensive to mount a legal case, since the state guidelines have been gutted.

As parents of a young child with Autism, we ask why? The answer is obvious, we feel that the State Board of Education is bowing to *political and fiscal* pressures from local educational agencies and is preparing to eliminate many rights that students and parents currently hold. We urge you to modify the proposed regulations and reinstate the current rights that will be lost.

Sincerely,
Michael R. Filmyer
Michael R. Filmyer
Anna M. Filmyer
Anna M. Filmyer

cc:
Rep. Ellen Bard, 153rd Legislative District
Hon. Thomas Ridge, Governor
Eugene Hickok, Secretary of Education
Independent Regulatory Review Commission

In these days it is doubtful that any child can succeed in life if he is denied the opportunity of an education. Such an opportunity . . . is a right which must be made available to all on equal terms.

Brown v. Board of Education
United States Supreme Court (1954)

Original: 2144

September 18, 2000

RECEIVED
2000 OCT -5 PM 3:15
INDEPENDENT REGULATORY
REVIEW COMMISSION

Mr. & Mrs. Michael Alegado Sr.
13 Castle Drive
Limerick PA 19468
(610) 948-1919

Dear Governor Ridge:

We are writing to you as concerned parents of a special needs son. We wanted to tell you just how imperative it is that the educational needs or our son, Mickey, be met as completely and conscientiously as possible. Just as special children need solid structure and organization in order to learn so, too, do the governmental regulations regarding their education need to be concise, intelligible, thorough and complete across all levels.

Mickey has not one, but two distinct diagnoses working against him: Fetal Valproate Syndrome, Mild Mental Retardation. Both of these diagnoses predispose Mickey to require specialized classroom settings which he will more than likely need for the majority of his lifetime. Only if these specialized classrooms are available and kept properly organized and maintained can there be any hope for Mickey, and many other special needs children, to attain the best quality of life possible. Only with the appropriate classroom environment can Mickey and so many of his peers gain valuable life skills and the educational basics that will enable them to achieve a semblance of a normal, independent existence. Up until recently, these classrooms were available to our special needs children. Now these classrooms are in danger of being swept under a camouflaging carpet calling itself a new regulatory proposal. (See Sections 14.102 and .103)

If this proposal goes through, it will successfully mask those directions, instructions and guidelines that are especially necessary to the educators, parents and advocates of special needs children. Once these written outlines become an unintelligible melange of meaningless numbers they will be rendered useless to those who must use them. How are local school officials, most with little background in special education, to control class size, structure and age range? How can they implement behavioral programs for those children whose education is directly affected by such problems? How do they draw up IEPs for the students or stipulate the number of and/or the very existence of special needs classrooms within their school district? When the classrooms are made available, how will the parents gain access to them for their children?

Existing federal rules are not structured in the expectation that each state will interpret them and take from them whatever they wish. This is the equivalent of placing a special needs child into a mainstream classroom and expecting him to take "whatever education you can get" from it. Just as that child will be doomed to fail out of frustration and the inability to process what he is taught; so, too, will the passing of this proposal or "irregular regulations" be doomed to failure. This failure will come not only at the expense of the state, the educators and the parents but, most critically of all, it will come at the expense of all the educable but overlooked special needs children.

Governor Ridge, ask yourself this question: If MY child had special needs, would I want the best possible quality of life for him? Or would I permit my state and federal government to sweep his needs aside and ignore him? Look deep into your heart and soul and put a stop to the passing of this proposal.

Please! Keep in mind that this could have been your child, but it could certainly be your grandchild.

Yours truly,

Michael & Jacqueline Alegado

Michael Alegado, Sr.
Jacqueline M. Alegado

On the behalf of Michael Alegado, Jr.

Original: 2144

RECEIVED
2000 OCT -5 PM 3:14
INDEPENDENT REGULATORY
REVIEW COMMISSION

Mr. & Mrs. Anthony L. Sherman
1142 Beech Street
Pottstown, PA 19464

September 17, 2000

Governor Thomas Ridge
Main Capitol Bldg.
Room 225
Harrisburg, PA 17120

Dear Governor Ridge,

We are writing to you as concerned parents of a special needs son. We wanted to tell you just how imperative it is that the educational needs or our son, Grant, be met as completely and conscientiously as possible. Just as special children need solid structure and organization in order to learn so, too, do the governmental regulations regarding their education need to be concise, intelligible, thorough and complete across all levels.

Grant has not one, but three distinct diagnoses working against him: bilateral cleft lip and palate, severe binaural hearing impairment and Pervasive Developmental Delay/Autistic Spectrum Disorder – Not Otherwise Specified. All three of these diagnoses predispose Grant to require specialized classroom settings which he will need for the majority of his lifetime. Only if these specialized classrooms are available and kept properly organized and maintained can there be any hope for Grant, and many other special needs children, to attain the best quality of life possible. Only with the appropriate classroom environment can Grant and his peers gain valuable life skills and the educational basics that will enable them to achieve a semblance of a normal, independent existence. Up until recently, these classrooms were available to our special needs children. Now these classrooms are in danger of being swept under a camouflaging carpet calling itself a new regulatory proposal. (See Sections 14.102 and .103)

If this proposal goes through, it will successfully mask those directions, instructions and guidelines that are especially necessary to the educators, parents and advocates of special needs children. Once these written outlines become an unintelligible melange of meaningless numbers they will be rendered useless to those who must use them. How are local school officials, most with little background in special education, to control class size, structure and age range? How can they implement behavioral programs for those children whose education is directly affected by such problems? How do they draw up IEPs for the students or stipulate the number of and/or the very existence of special needs classrooms within their school district? When the classrooms are made available, how will the parents gain access to them for their children?

Existing federal rules are not structured in the expectation that each state will interpret them and take from them whatever they wish. This is the equivalent of placing a special needs child into a mainstream classroom and expecting him to take "whatever education you can get" from it. Just as that child will be doomed to fail out of frustration and the inability to process what he is taught; so, too, will the passing of this proposal or "irregular regulations" be doomed to failure. This failure will come not only at the expense of the state, the educators and the parents but, most critically of all, it will come at the expense of all the educable but overlooked special needs children.

Governor Ridge, ask yourself this question: If MY child had special needs, would I want the best possible quality of life for him? Or would I permit my state and federal government to sweep his needs aside and ignore him? Look deep into your heart and soul and put a stop to the passing of this proposal. Please!

Yours truly,

Anthony and Lisa Sherman

Anthony L. and Lisa Ann Sherman
(on behalf of Anthony G. Sherman)

Cc: Secretary Eugene Hickok, PA Department of Education
Independent Regulatory Review Commission

Original: 2144

PENNSYLVANIA
SCHOOL BOARDS
ASSOCIATION, INC.

PSBA
PENNSYLVANIA SCHOOL BOARDS ASSOCIATION

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

September 15, 2000

RECEIVED
2000 SEP 18 AM 8:35
INDEPENDENT REGULATORY
REVIEW COMMISSION

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

Dear Mr. Nyce:

Enclosed are the comments of the Pennsylvania School Boards Association to the Department of Education concerning proposed revisions to 22 Pa. Code, Chapter 14, regarding special education services and programs, that was published in the September 2, 2000 issue of the *Pennsylvania Bulletin.*

Generally, we are supportive of the proposal and 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.

PSBA believes that the task of revising the 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.

Enclosed is a copy of our testimony to the State Board of Education that reflects our specific comments on the latest draft of revisions to the chapter. We offer these comments to you as the proposal moves through the regulatory review process. Please contact me if you have any questions regarding the issues addressed in this letter.

Sincerely,

Tom Gentzel

Thomas J. Gentzel
Assistant Executive Director
Governmental and Member Relations

PENNSYLVANIA
SCHOOL BOARDS
ASSOCIATION, INC.

PENNSYLVANIA SCHOOL BOARDS ASSOCIATION

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

Testimony on the Proposed Revisions to Chapter 14 Regulations Special Education Services and Programs

Presented By

Thomas J. Gentzel
PSBA Assistant Executive Director
Governmental and Member Relations

To The
State Board of Education

Harrisburg, PA
September 15, 2000

Good morning. I am Thomas J. Gentzel, assistant executive director for governmental and member relations for the Pennsylvania School Boards Association. We appreciate this opportunity to present comments concerning the proposed revision to the Chapter 14 regulations for special education services and programs that was published in the Sept. 2, 2000 issue of the *Pennsylvania Bulletin*.

Certainly, this is not the first opportunity for our organization and others to comment on this important proposal. The State Board is to be commended for providing numerous forums at its regular meetings, in special roundtable discussions and in more formal public hearings to receive feedback and to enable dialogue among affected interests. We appreciate the interest that members of this board and staff of the Department of Education have shown in hearing what these groups have to say and giving their comments full consideration.

The journey to get to this point in the process has been a long road. At the outset, PSBA encouraged the State Board to adopt an approach that incorporated by reference federal special education requirements into the state regulations, adding only other provisions that are necessary as a matter of law or controlling court decisions. The intention is to simplify an inordinately complex area of the law while retaining essential due process protections and assurances for all children with disabilities. We commend the board for accepting this as the premise for its work.

However, we have noted that since the board made that decision and began crafting specific language of the proposal, an increasing number of Pennsylvania-specific provisions under the current regulations and standards are being incorporated into each subsequent draft of revisions to Chapter 14. Certainly these revisions will address various concerns of certain groups, although some will continue to advocate nothing less than the complete restoration of the existing Chapter 14 and Chapter 342.

We would urge you to remember that this task of revising Chapter 14 provides a critical opportunity for the state to redesign its rules for special education. This can best be done by including the essential protections mandated by federal requirements and providing relief to local school districts by minimizing the current extensive state requirements that exceed federal law.

The Sept. 2, 2000 draft regulations do contain some modifications from previous drafts that PSBA had suggested to you earlier. We thank you for considering our comments and making adjustments in these areas:

Section 14.122 Screening – PSBA had recommended the elimination of any timelines regarding the use of instructional support because it would be inconsistent, and unnecessary, to impose detailed requirements for one screening option that a district may elect to utilize. As amended, the language under this section contains a general description of what the screening process should include, without mandating various specific internal deadlines to be met. Rather, the revision to this section allows a district to conduct screening activities within a 60-day timeframe.

Section 14.131 IEP – We suggested that there was a disconnect in the previous draft between the intent of this section and the potential effect of the language that was presented. The earlier provision required that students with individualized education programs (IEP) continue to receive special education or related services until the IEP is revised. However, there are other reasons that services may be discontinued. For instance, if a child turns 21 or graduates, his or her special education entitlement ends.

That wording could have had the unintended effect of expanding the stay-put provision of law. We recommended, and you approved, the addition of language stating that every student receiving special education and related services provided for in an IEP developed prior to the effective date of the revised Chapter 14 amendments would continue to receive the special education and related services under that IEP "subject to the terms, limitations and conditions set forth in law."

Section 14.141 & Section 141.142 Educational Placement/Caseload for Special Education -- The issue of placements, caseloads and class sizes continues to be one of the most controversial pieces of the Chapter 14 proposal. PSBA supports the elimination of current class size limitations as well as the effort to provide local school officials with some latitude in complying with special education caseload and age range restrictions.

The association had objected to requirements in the previous draft for school board *policies* on these matters to be subject to approval by the Department of Education. The enactment of local policy is an essential and exclusive function of a school board, and its exercise must be guarded against undue interference by another level of government. We suggested that the regulations instead require school entities to address the caseload and age range issues in their *special education plans*, which are subject to approval by the department. That recommendation has been accepted, and we thank you for making that change.

For the record, PSBA remains concerned regarding the following two provisions under the Sept. 2 draft of the Chapter 14 regulations:

Section 14.141 Educational Placement – We believe that further clarification would be helpful under subsection (5) of Section 14.141, which permits the department to disapprove local caseload provisions whenever they are "determined to be inadequate." We still do not know what that phrase means or the basis for making that judgement. The passage contains a reference to graduation and drop-out rates, but we are not told how those or other criteria will be applied. On the age range issue, in subsection (6)(iii), we are told only that districts may provide "justification" for deviating from the recommended age ranges but are provided no indication of the criteria the department will use to approve or reject such exceptions.

Section 14.162 Impartial Due Process Hearing and Expedited Due Process Hearing – PSBA continues to urge the State Board to simplify the special education hearing process. The association's legislative platform, adopted by representatives of school boards across the commonwealth, contains the following item on this point: PSBA "supports the revision of the Chapter 14 special education regulations to eliminate provisions for appellate review of special education hearing officer decisions and to provide for a single level of due process hearing for such decisions."

As this proposal moves through the regulatory review process, it is important for all who will consider it to also recognize that state government must address the critical problem associated with state funding of special education programs. The cost of delivering special education programs has created a very real fiscal crisis for school districts of all descriptions, and state government is failing in its obligation to pay for the extraordinary expense of meeting the needs of children with disabilities. PSBA has been working with Rep. Jess Stairs and Sen. Robert Tomlinson to seek increased funding for special education programs and services. This issue is one our association's top legislative priorities.

It is critical, too, that special education funding be adequately addressed on the national level by Congress. As the cost of special education continues to rise due to growing enrollments of eligible students, along with new mandates requiring districts to pay for more medical-related services, school districts are being forced to cut back in other areas to meet their federal obligation under IDEA. At the same time, Congress has not met its commitment to pay for 40% of the excess cost of its special education mandate. The federal funding level has ranged from 7-13%. Although funding is not a matter for the State Board to resolve, we seek your support for the efforts of PSBA and other education organizations in this important area.

I will close this testimony by emphasizing to you the strong commitment of school boards to special education. Some may be tempted to criticize those who advocate changes to the current regulations, describing any proposed revisions to the program as an attempt to weaken or abandon it. That simply is not accurate. In fact, the opposite is true. We believe that the true measure of the value of what ultimately becomes the new Chapter 14 is how school districts are held accountable for providing a Free and Appropriate Public Education (FAPE) to students with disabilities, as required by IDEA. The federal law and regulations contain substantive responsibilities and standards of performance for school districts. Creating additional layers of state requirements can serve to impede the delivery of service, unnecessarily add to its cost and, ultimately, benefit no one. This discussion is about achieving the right balance – that is, protecting students while ensuring that the program is delivered efficiently and effectively. These rules are a major step forward to achieving that goal. Thank you.

Original: 2144

632 Main St
Dickson City, Pa. 18519-1526
Sept 15, 2000

RECEIVED
2000 SEP 21 AM 10:26
REGULATORY
REVIEW COMMISSION

Re Chapter 14 Regulations

Dear Mr Robert Nyce,

I know you are a busy so I won't take to much of your time.

Please, if you can, do not change or delete Chapter 14 or Chapter 342.

So many people will read the regulations and do different things and children will be hurt,

Some people will not want to or not know they are doing wrong or right. Without clear definitions and rules there will be a mess.

Don't let these children be in harms way.

Please help if you can.
thank you
Mr. & Mrs James J Donovan
+ Family.

Original 2144

September 15, 2000
PART I

Dr. Garland,

We were unable to testify at the CISC Harrisburg office today due to a prior scheduling conflict. Please accept this document to be added to the written "testimony" in dealing with the proposed changes for 22 PA Code Chapters14 and 342.

We are a family newly caught up in the system for which the system has failed. The first half of the letter will be our experiences to date in dealing with the Intermediate Unit and the division of compliance. The second half of the letter will be addressing the proposed changes.

We have three-year-old autistic identical twin boys who, along with their two older sisters are the love of our life. When they turned three, June 11th, 2000, they "transitioned" from the 0 to 3 program to the pre-school program. We are now in due process as a result from on going transition problems since the 1st IEP meeting June 9th, 2000.

The first IEP meeting was combined with the MDE review meeting lasting 3 ½ hours on the last possible day before they turned three. The IEP was not completed for us to review. The staff had to leave and requested we sign the NORA to ensure them placement into the only autistic behavioral program in Lancaster. The IU staff would finish the IEP back at the office, they would then "send us a copy to review and make changes". This never transpired. We were then handed our procedural safeguard book on the same day. The IEP was mailed back after the IU had gone on break. After numerous attempts in reaching the IU staff about issues left out on the IEP, we received a call when we used the words due process.

In the IEP, some of the main things left out were continuing their 2 hour per week per child speech services and OT services on the off weeks, bus safety issues, in dealing with car seats and that an aide was needed on the bus for seven autistic preschoolers, no mention of ESY services (the IU calendar runs on a 132 day year) ... Autism does not follow that calendar and is a 365 day a year lifetime diagnosis.

We reopened the IEP and questioned why the boys were put in a ½ day program instead of the full day recommended program. The IU response was due to lack of staff. After the IU's four week hiatus the month of August and a total of 30 hours of services from the IU 6/9/2000-8/28/2000 the boys started a "full" 6 hour a day program 4 days a week per the IU calendar starting August 28th. On the off weeks the wrap services hours that are to be provided are not amounting to even the minimum hours set by the program models that the IU is basing their program on. It was included on the IEP that the boys would be granted up to 26 hours a week wrap service and we are having our lawyer check out if the IU is responsible for this seeing how it is on the IEP.

When we reopened the IEP in July, we did not sign the NORA and requested a prehearing conference July 27, 2000.
The IU rejected the prehearing conference and requested due process. They then did not notify the hearing officer and fill out the appropriate paper work, which to this day we do not have resolution on an IEP dating back to June 9th, 2000. The hearing date with letters stating 'initial request' July 27th is now set for October 20,2000. This does not follow the "30 day rule" and due to the carelessness on the IU's part, they have once again delayed needed services for not one but two children who needed their services continued through transition and beyond. There is NO excuse for this. This left our boys with essentially a 3month break in speech services.

Compensatory speech at 45 minutes for five weeks have been offered, this fell through due to the IU offering on paper something that could not be delivered by the staff. The second offer was for twelve hours compensatory speech service per child. Up to this point the IU was offering on paper services that could not be provided. The 12 compensatory hours were offered at a place where we have been on a waiting list for over 3 months. On August 25th after being on hold due to the "providing" facility not having openings and not sure if they could service our boys, we were told that arrangements were being made and to date the boys have received 3 of the 12 compensatory speech hours. The speech therapist is now on a 3week vacation and services should resume October 13th.

The aide on the bus issue, we were told because there have been no incidents to date an aide is not needed. As of August 24th, this was not resolved. The facts are 7 to 9 autistic preschoolers are on a bus with one bus driver. Both of my sons can get out of their car seats and this would pose a hazard, along with getting all the children off the bus safely should a need arise. They can not follow simple commands like "stay there". We have brought lawyers, parents, and congressmen in on this issue and the IU does not feel the need. After receiving a call stating from the bus driver on August 24th that no aide would be on the bus for the start of school August 28, I told her to relay to the Department of Transportation that the media is aware of what is going on and will be filming that afternoon. Five minutes later, an aide was put on the bus. Whether the media added to the aide on the bus, we do not know.

Rep. Armstrong told me it was his impression that the aide was temporary and if there were no incidents they would reevaluate to see if necessary. I called transportation and they assured me on August 25th that the aide was permanent for this school year (which means we will probably need to do this all again next year). As of August 28th, our boys were woken up at 6:15 AM to be picked up at 6:55 AM to be at school for 8:45 AM (approximately 2 hour trip – each way) for three year old autistic preschoolers! We are waiting over the next few week to see what the true driving times are and will be addressing this issue at due process. To date the ride one way is over one hour and fifteen minutes, in good weather and the time changes daily.

As a result we have sent six letters to the state bureau of compliance (three per child). The State department of compliance has been of little assistance until we requested the help of our PA State House Representative, Tom Armstrong that prompted them to return a phone call. When we spoke with them prior to due process, the division representative did not see a problem with the shortened school hours due to lack of staff or stopping their speech services and my husband was told "what is the problem". We then notified the division of compliance that we were in due process. This left the division off the hook from investigating until we found out that one week prior to when the "30" day time frame was to be up and the hearing was to be held, that the IU that requested the move to due process never filed the paper work. We then called the division of compliance again to request their help in this matter. Their response again, "what's the problem", "did you want to go to due process?" I though this is why you make these guidelines and safe guards. They have not worked to date and the division that is to be enforcing the state regulations seems somewhat aloof to the regulations with or without due process.

The division of compliance response has consistently been "What's the problem" more than three times now and we were told that because it is in the "supposable due process" they can not respond, which leads this letter to you. The system has failed. Not only has months of much needed services for my boys been wasted away; it has brought on undue stress to them and our family. Who monitors the IU, it is not our division of compliance? Who monitors the division of compliance?

Keep in mind these are the highlights. Do not turn a deaf ear or a blind eye to this situation. Our children are relying on the "supposed safe guards" to help them. We can accept the diagnosis for our sons, we can not accept the continual lying and lack of concern from the so-called agencies with the so-called regulations that "are here in the best interest of the child". Every child deserves a safe, free, appropriate public education, but in our situation we have hired a lawyer and fight for even the basic safety issues.

Please feel free to contact us on any of these issues for the "full story". I will make myself available to you should you need more information. You also have an open invitation to the due process hearing scheduled 10/20/2000 should you choose.

Thank you for your time.

Sincerely,

Ann and Stephen Klonicki

Ann L Klonicki

Steph Klonicki

September 15, 2000
PART II
Dr. Garland,

In response to the proposed regulations, you can see how from the above scenario, the regulations and safe guards do not work. We need to truly enforce these regulations. These providers and agencies need held accountable for their actions or lack there of! What happens to the rights of the children?

14.102 Purposes

(a) It is the intent of the Board that children with disabilities be provided with quality special education services and programs.

What happens when on paper (like in our boys' situation) the program looks good but the quality, length of hours can not be provided? This plays a direct impact on their personal advancement and mainstreaming them. The minimum guidelines for the boys program is 20 hours per week straight Applied behavioral analysis. They do not receive the minimum following the NY State guidelines, The Rutgers program or the Jericho School program (all used in the development of the boys program).

(i) All children with disabilities have available to them a free appropriate public education...

What happens when appropriate is taken to mean one thing to the IU and another to the families being serviced?

(ii) The rights of the children are protected.

Isn't this what is being question in the above letter? Do my children have the rights only when legal action is taken? Do we have to fight for the basic services? Who is protecting their rights? It is not the IU or the division of compliance with their best interest at heart. The division of compliance verbally has taken the position to look the other way against the state regulations to us over the phone. Does this need to be taken to the federal level?

14.132 ESY

(i) Regression...

Why does this not take into consideration lack of progression? Autism, it is like diabetes, you know you need the services or insulin but lets see how you do off it for a while, instead of continuing the program. This (regression) way of thinking makes no sense.

(vii) severity.

Autism diagnosis falls under this category yet we have to fight and struggle to get services on a disability that occurs 365 days a year not on a 132 day IU calendar. Why is this? Why in preschool programs is it considered appropriate to have a 12 month calendar schedule with some months having seven or eight day services.

Is that appropriate, if these were your children, would that be acceptable to you?

14.141 Educational Placement

(6) Ensure the ability of assigned staff to provide services...

In our case we were told that they did not have the staff. According to you guidelines, what would happen? We already know how the division of compliance has verbally responded, state regulations or not, it looks good on paper but when you can not follow through in service, there is a problem.

14.154 IEP

(d) (1) IEP implementation no later than 14 days after completion.

See above letter for details. Our IEP is still not agreed on in over 4 months. The IEP was not completed at the meeting. We were asked to sign the NORA without having the IEP completed. We were not able to read the IEP let alone make changes to it after putting our faith and trust in the organization that was there in the best interest of the children.

14.155 Range of services

(a) options are available

We are having problems with this one now see above letter. It is good on paper, but providing it is few and far between.

(d) duration

We are fighting for this now. None of the agencies we are working with are taking into consideration of the boys needs, best interest or diagnosis. If so we would not be in due process. The minimum weekly hours for ABA programs is 20 hours. We have not been able to get the minimum on the off weeks. What would it be like to get more than the minimum? Shouldn't the state regulations fight for a middle ground, somewhere between minimum and maximum? **If so, please add this request in the supposed regulations, "that all children with special needs are provided with the appropriate hours of service specific to their diagnosis". That "less than the minimum hours will not be tolerated and be held in violation to the child's rights of a free and appropriate education".**

Our IEP's were written with the IU's best interest not the boys. Parents need to have a stronger say in this matter.

14.156 System of quality assurance

Caseload

This is a joke. With all of the above stated problems, you want to take staff away from the children that need it the most. Shame on whom ever thought this one up. Our boys need the one to one ratios. Anything less at this time is inappropriate. Who has the right to step in and say this is the appropriate ratio? Are you taking into consideration the numerous physician, psychologist and special service staffs recommendations? It should be taken on individual basis along with diagnosis; not how much funding is available! We can fund two football stadiums with tax dollars but lord forbid we want to help children with special needs have an appropriate education let alone an aide on a bus for 7 autistic children traveling up to four hours round trip a day. This one MUST be adjusted to the appropriate caregivers for the children. When you go into a hospital you do not ask for an adequate nurse, you ask for, receive and deserve the appropriate skilled caregiver and in the school education system this should be the same.

14.162 Expedited due process

(q) time lines

(i)We are proof that this does not work, see above comments. The parents are required to meet the deadlines set forth by the state regulations, why then doesn't the IU or the state have to follow these guidelines? What reprimands occur if they are not in compliance? What happens when the division of compliance, turns a deaf ear? How far do the parents need to go before the right thing is done?

We respectfully add these comments to the review board. We are open to any questions you may have on the above matters. Last but not least we pray that you do what is right to ensure these children for which by no means on their part did they ask for or deserve their disabilities, to provide ALL of them with a safe, free and truly appropriate education.

Sincerely,
Ann and Stephen Klonicki
214 Farmcrest Lane
Mt. Joy, PA 17552
717-653-9477

Ann L Klonicki

Klonicki
214 Farmcrest Lane
Mt. Joy PA 17552