



Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

September 29, 2000

Mr. Frederick Zeiset
194 N. Erisman Road
Manheim, PA 17545

Dear Mr. Zeiset:

Thank you for your letter dated September 25, 2000 on proposed revisions to regulations Chapter 14 (special education services and programs).

Your letter is considered as official public comment and is being shared with all members of the Board. Pursuant to the provisions of the Regulatory Review Act, copies of your comments are also being provided to the Independent Regulatory Review Commission (IRRC) and the chairmen of the House and Senate Education Committees.

Be assured that your comments will be considered carefully in the development of the final-form of these regulations.

Recent amendments to Regulatory Review Act include a provision that the final-form of regulations be mailed to public commentators at their request. While no longer required to do so, the Board will continue its practice of sending the final-form of the regulations to all public commentators. Therefore, it will not be necessary for you to make a specific request for it.

Sincerely yours,

A handwritten signature in cursive script that reads "Peter H. Garland".

Peter H. Garland
Executive Director

cc: Members of the State Board
Senator Rhoades
Senator Schwartz
Representative Stairs
Representative Colafella
IRRC

RECEIVED
2000 OCT -2 AM 9:41
INDEPENDENT REGULATORY
REVIEW COMMISSION

Original: 2144

Mel Knowlton
Office of Mental Retardation
P.O. Box 2675
Harrisburg PA 17105-2675

RECEIVED
2000 OCT -2 AM 9:41
REVIEW COMMISSION

RECEIVED
OCT 2 2000
STATE BOARD OF EDUCATION

Dear Mr. Knowlton,

I am writing this letter to express my concern over the PA State Board of Education's proposal to change the State Special Education Services and Programs 22 Pa. Code, Chapter 14, and to delete Chapter 342. I understand that these changes are meant to "streamline" PA regulations implementing IDEA, however I encourage the Board to also consider the effect these changes will have on the children and families they are meant to help. I fear that these changes will result in less comprehensive definitions, the elimination of required short-term objective criteria for IEPs, reevaluations only every two years, unclear guidelines whether a child could receive therapy if they have a delay in only one developmental area, and insufficient requirements and qualifications for service coordinators.

In 1996 my son was diagnosed with neurological deafness as the age of eight months. Since that time my son and family have received home visits, speech and hearing therapy, professional counsel, Language Acquisition Preschool, and countless notes and phone calls of support from qualified Early Intervention and Intermediate Unit professionals. As I share my experience in this journey with others, I continue to hear how the support for families of children with disabilities in Pennsylvania is superior to many surrounding states. I also realize that the quality of support that families in Pennsylvania receive today has improved in the last twenty years. It would be a shame to lose the outstanding quality of support that we enjoy today in Pennsylvania in the name of "streamlining" regulations.

I could support changing these regulations only if I was convinced that the result would bring improved support to the families of children with disabilities. Since I am not convinced of this, I urge the PA House and Senate to **not** pass these proposed changes.

Thank you for your thoughtful consideration!



Frederick J. Zeiset

Original: 2144



RECEIVED

2000 OCT -5 AM 10:42

Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

INDEPENDENT REGULATORY
REVIEW COMMISSION



September 29, 2000

Dr. Leslie Rescorla
Bryn Mawr College
101 North Merion Avenue
Bryn Mawr, PA 19010-2899

Dear Dr. Rescorla:

Thank you for your letter dated September 28, 2000 on proposed revisions to regulations Chapter 14 (special education services and programs).

Your letter is considered as official public comment and is being shared with all members of the Board. Pursuant to the provisions of the Regulatory Review Act, copies of your comments are also being provided to the Independent Regulatory Review Commission (IRRC) and the chairmen of the House and Senate Education Committees.

Be assured that your comments will be considered carefully in the development of the final-form of these regulations.

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Sincerely yours,

A handwritten signature in black ink, appearing to read "Peter H. Garland".

Peter H. Garland
Executive Director

cc: Members of the State Board
Senator Rhoades
Senator Schwartz
Representative Stairs
Representative Colafella
IRRC

Department of Psychology at West House
 Bryn Mawr College
 101 North Merion Avenue
 Bryn Mawr, PA 19010-2899
 610 527-5190
 fax: 610 527-2879

RECEIVED

2000 OCT -5 AM 10:42

BRYN MAWR

REVIEW COMMISSION

September 28, 2000

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

Dear Dr. Garland:

I am writing to comment on the draft of Pennsylvania's Chapter 14 Special Education Regulations. My particular concern regarding this draft is the vagueness of the wording with regard to the need for a school psychologist as a member of a multidisciplinary evaluation team (14.123a). In this matter, I fully support the recommendation made recently by Dr. Jerry McMullen on behalf of the Pennsylvania Psychological Association that the regulations should state that evaluations "shall include a full assessment and comprehensive report by a certified school psychologist."

I have been the director of Bryn Mawr College's School Psychology Certification program for the past 15 years. In that time, 158 professionals have become certified as school psychologists in Pennsylvania through Bryn Mawr's program. Many of these individuals are working as school psychologists in the Commonwealth of Pennsylvania, as are many of the 100 other professionals who were certified through Bryn Mawr from 1970-1985. My experience with these professionals has given me a tremendous appreciation of the unique contribution school psychologists make to the delivery of services to Pennsylvania's children. I would like to summarize this contribution briefly below.

1) A certified school psychologist is the only professional in the school setting qualified to assess the intelligence of children and adolescents. Determination of intellectual level is central to the determination of mental retardation, specific learning disability, and giftedness.

2) Certified school psychologists receive extensive training in the assessment of language, memory, attention, and perceptual skills. The presence of a specific learning disability is generally attributed to deficits in one or more of these basic psychological processes, and thus assessment of these areas is central to the evaluation process.

3) More than any other school-based professional, certified school psychologists are skilled in the techniques of behavioral observation, assessment, and intervention. Over the past 15 years, school psychologists have increasingly become involved in consultation with regard to behavioral issues in the classroom. This aspect of their role is particularly relevant to children classified as emotionally disturbed.

4) School psychologists are knowledgeable about psychological/psychiatric disorders of children and adolescents. Those completing the Bryn Mawr program take courses such as Developmental Psychopathology; Family, School and Culture; and Introduction to Psychotherapy.

These courses give them the skills needed to deal with mental health issues in schools, an increasingly important function given the large numbers of children in school settings with attention deficit disorder, depression, anxiety problems, pervasive developmental disorder, oppositional defiant/conduct disorder, obsessive-compulsive disorder, and substance abuse problems.

5) School psychologists are trained in statistics, research methods, and psychometrics. This allows them to evaluate the merits of different tests, to assess whether discrepancies and differences between test scores are statistically significant, to collect and analyze data about acquisition and retention of academic subject matter, and to assess the efficacy of behavioral or academic interventions. No other professional working in the school setting has this kind of training and expertise.

In summary, school psychologists play a unique and invaluable role in schools. Their skills are essential in the determination of eligibility for most special education exceptionality categories, and they are especially well-qualified to help plan, monitor, and evaluate intervention efforts. I urge the Board to revise the wording of Chapter 14 so that the school psychologist's central role in the evaluation and intervention process is made clear. Thank you for your attention to this request.

Sincerely,



Leslie Rescorla, Ph.D.
Director of Clinical Developmental
and School Psychology Program

Ted Sutton
5704 Gordan Drive
Harrisburg, PA 17112
September 11, 2000

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

Dr. Garland:

This is to provide comments relative to the proposed changes in Chapter 14, published in the Pennsylvania Bulletin on September 2, 2000. I offer the following.

1. §14.162(d), as proposed - Requires that"The hearing for a child with a disability or thought to be a child with a disability shall be conducted by and held in the school district at a place reasonably convenient to the parents."

Federal regulations require ... "Each hearing and each review involving oral arguments must be conducted at a time (emphasis added) and place that is reasonably convenient to the parents and child involved (emphasis added)." (34 CFR §300.511(d))

In that the preamble speaks as the intended purpose of the changes are to align with federal regulations, the proposal at § 14.162(d) should be changed and would remain consistent with the State Board's intent.

SUGGESTED REVISION OF §14.162(d)

The hearing for a child with a disability or thought to be a child with a disability shall be conducted by and held in the school district at a time and place reasonably convenient to the parents and child involved.

2. §14.162(e) as proposed - Requires that"The hearing shall be an oral, personal hearing and shall be open to the public unless the parents request a closed hearing (emphasis added)."

The Federal regulations require ... "Parents involved in hearings must be given the right to...(ii) Open the hearing (emphasis added) to the public." (34 CFR §300.508(c)(ii))

Discussion: Under the PA proposed language, all hearings are to be open to the public unless the parents request that they be "closed". This conflicts with the federal regulations that require thatall hearings be "closed" to the public unless the parents asks that the hearing be "open". Therefore, the language needs to be edited which will not change the intended policy of the State Board.

SUGGESTED REVISION OF §14.162(e)

14.162(e) ...The hearing shall be an oral, personal hearing and shall be closed [open] to the public unless the parents request an open [closed] hearing.

Thank you for your consideration of this matter.

Sincerely,



Ted Sutton

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SEP 21 2000

PA. STATE BOARD
OF EDUCATION

Original: 2144

*Responded by e-mail
9/29/00*

Benkovic, Susan

From: J McMullen [jemscat@yahoo.com]
Sent: Friday, September 29, 2000 2:08 PM
To: 00statbd@psupen.psu.edu
Subject: proposed changes to chapter 14

I am gravely disturbed at the new language at Section 14.162(i) that was added since the draft was voted on by the Board. I draw your attention to the section that would prohibit parent advocates from representing parents at due process hearings.

As a parent of a special needs child with complex needs, I have been harassed, bullied, and intimidated by my daughter's school district in an attempt to cheat my daughter out of her right to a free and appropriate education as guaranteed by Federal law.

By requiring parents to obtain professional attorneys for representation, you would in effect take the term "free" out what our children are entitled. This is because the school district only allows special education services to those parents who have knowledgeable advocates or attorneys. Those of us who have tried to navigate the process alone, have lost the most basic services are child was entitled to under the law.

Educational attorneys are very few, and most charge a retainer of \$1500 minimum with hourly fees for phone calls and paper work and other time involved at \$150 and up. This would prohibit parents like me from accessing their services and thereby allow the school district whose legal counsel is paid for with OUR TAX DOLLARS to cheat our children out of what they need to succeed in school.

What does this mean to tax payers? Our children go back to the days of special ed rooms located in the basement and graduating to an institution to make quilts for the rest of their lives. By enabling our children to get a "free and appropriate education" you give them the opportunity to become productive citizens when they graduate.

Please think hard about this law that was designed by an attorney for a school district. It is designed with only one thing in mind. TO CHEAT OUR CHILDREN!

Thank you for your time. Please feel free to contact me at any time to expand further on my very negative experience with my school district. Phone number: 412-422-9492 and address: 767 Montclair St, Pittsburgh PA 15217

Jeanne and Michael McMullen
registered voters and parent of Caitlyn

Jeanne McMullen

RECEIVED
2000 OCT -5 AM 11:41
ATTORNEY
REVIEW COMMISSION

Benkovic, Susan

From: J McMullen [jemscat@yahoo.com]
Sent: Friday, September 29, 2000 2:27 PM
To: 00statbd@psupen.psu.edu
Subject: proposed regulations regarding chapter 14

I need to take additional time to comment on an earlier email I sent to you regarding the proposed changes to chapter 14, namely the verbage added in the eleventh hour suggesting that parents be prohibited from using lay advocates for representation against the school district in due process and other negotiations.

My additional point is to direct your attention to the fact that the Education Law Office in Pittsburgh only accepts one to two cases per year. This leaves thousands of families underrepresented with no finances to retain an attorney.

This would mean only wealthy families could provide a free and appropriate education for their child.

Therefore, if you must pass this bill as written, I beg of you to add further verbage authorizing funds to help parents of special education children pay for attorneys. These funds should not be limited based on income because the right to a free and appropriate education should be granted to all children not just those in certain income brackets. It also should not be based on whether the family wins, because many families will be intimidated from even trying to exercise their rights.

This suggestion would prove extremely expensive to the state. It would make a whole lot more sense to continue to allow families to choose their own representation without limitations. Trained, experienced, affordable and good special education advocates are already few and far between. Please do not take this option away from us as well.

Jeanne McMullen

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<http://photos.yahoo.com/>

Original: 2144



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Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

REGULATORY
REVIEW COMMISSION



September 29, 2000

Ms. Marianne T. Haiduck
76 E. Georgianne Drive
Richboro, PA 18954

Dear Ms. Haiduck:

Thank you for your letter dated September 27, 2000 on proposed revisions to regulations Chapter 14 (special education services and programs).

Your letter is considered as official public comment and is being shared with all members of the Board. Pursuant to the provisions of the Regulatory Review Act, copies of your comments are also being provided to the Independent Regulatory Review Commission (IRRC) and the chairmen of the House and Senate Education Committees.

Be assured that your comments will be considered carefully in the development of the final-form of these regulations.

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Sincerely yours,

A handwritten signature in cursive script that reads "Peter H. Garland".

Peter H. Garland
Executive Director

cc: Members of the State Board
Senator Rhoades
Senator Schwartz
Representative Stairs
Representative Colafella
IRRC

Original: 2144

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

RECEIVED
2000 OCT -2 AM 9:42
REGULATORY
REVIEW COMMISSION

09/27/2000

From: Ms. Marianne T. Haiduck
76 E. Georgianne Drive
Richboro, PA 18954
215-322-8813

Subject: Proposed Regulations on Special Education Services and Programs

Introduction

Having been unable to appear at the hearing for comments regarding the proposed revisions to 22 Pa. Code, Chapter 14, I respectfully submit the following statement to you for consideration by the State Board of Education.

Purpose

22 Pa. Code, Chapter 14, Section 14.101 explicitly quantifies the definition of developmental delay; however, Section 14.102 (a)(2) adopts the definition of Specific learning disability under section 300.541(a)(2) of 34 CFR Part 300 which does not explicitly quantify what is meant by "a severe discrepancy between achievement and intellectual ability". Specific learning disability needs to be further defined in 22 Pa. Code, Chapter 14, to explicitly quantify what is a severe discrepancy between achievement and intellectual ability.

References

34 CFR Part 300:

300.7(c)(10) Specific learning disability is defined as follows:

(i) *General*

The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) *Disorders not included*

The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

300.541 Criteria for determining the existence of a specific learning disability

- (a) A team may determine that a child has a specific learning disability if –
- (1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, if provided with learning experiences appropriate for the child's age and ability levels; and
 - (2) The team finds that a child has a **severe discrepancy between achievement and intellectual ability** in one or more of the following areas:
 - (i) Oral expression.
 - (ii) Listening comprehension
 - (iii) Written expression.
 - (iv) Basic reading skill.
 - (v) Reading comprehension.
 - (vi) Mathematics calculation.
 - (vii) Mathematics reasoning.
- (b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of –
- (1) A visual, hearing, or motor impairment;
 - (2) Mental retardation;
 - (3) Emotional disturbance; or
 - (4) Environmental, cultural or economic disadvantage.

22 Pa. Chapter 14, Section 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.**

Discussion

As the parent of a dual exceptional student, I have had first hand experience with the misinterpretation of the definition of a specific learning disability. My initial request for evaluation of my daughter for a learning disability was when she entered the first grade. She was finally formally evaluated at the end of second grade, and found to have a Verbal IQ of 133. However, her achievement subtest standard scores were 96, and 103 in reading and spelling, a discrepancy of over 2 standard deviations when compared with her IQ, but the school psychologist found "no areas of remarkable deficiency in her

performance which support the need for exceptional education services." The psychologist did not, as required by law, evaluate the discrepancy between her intellectual ability and her achievement in reading and spelling. The school psychologist also did not consider parent input to the Multidisciplinary Evaluation, or the fact that the child had been receiving tutoring at home that was beyond the learning experiences appropriate for her age and ability level. Other members of the MDE team did not disagree with the school psychologist. For whatever reason, (did not understand the law, fear for their jobs, or possibly support of their co-workers), it was the school employees against us, the parents. We signed the CER with a request for speech/language screening. There was no reconsideration of our daughter's eligibility for special education services after a Central Auditory Processing test battery identified a severe auditory/language processing deficit. The speech evaluation, we were told was "fine", but having just recently received a copy of the speech evaluation report, this was not so. Her Speaking composite standard score was 93, a discrepancy of 2.5 standard deviations when compared with her verbal IQ. There were several language subtest scores that were severely discrepant.

Most parents of elementary level students are not familiar with the statistics of educational psychological testing and the laws related to special education. It takes much time to acquire the background in these areas needed to advocate for a child. Parents are left to trust the educational professionals. Although we did not agree with the conclusions of the MDE, we did not have the knowledge needed to challenge it and we could not afford an attorney. State parent support services were also out of our reach because they are available only during day-time hours and not in the evening when working parents can access them.

About five years after the 2nd grade MDE, in 8th grade, we requested a second MDE because our daughter was experiencing extreme difficulty in junior high school, and we could no longer provide at home the level of tutoring she needed. After parent dissent from the conclusions and recommendations in that CER, some special education services were finally provided by the school district, but it was too little too late.

The two school psychologists who administered the evaluations (2nd grade and 8th grade) did not do sufficient analysis of the test results; for the most part they based their conclusions on global and composite scores. Findings from a recent independent multidisciplinary evaluation in 9th grade, include a significant language based learning disability (dyslexia), as well as central auditory, visual perceptual, visual motor, and sensori-motor processing deficits.

It has been 2.5 years since I have been trying aggressively to get the school district to provide appropriate services to our daughter. It has cost over \$1600 in lawyer's fees for consultation, that are not recoverable because there was no Due Process Hearing. It has cost several thousand dollars in lost work time for uncompensated time off from work for meetings and research time. It has cost an incalculable loss of family time, and emotional/educational "trauma" to the child.

Our daughter has just entered the 10th grade and is on a 5th grade reading level. Fortunately, she has been placed in an approved private residential school for students with language based learning disabilities, and as a parent I believe this placement is appropriate and justified. As a taxpayer I ask, "What is accountability"?

Had special education services been provided early in elementary school when her reading level was only slightly below grade level, this placement in a special school would not have been needed. She would have received remediation in the needed skill areas, and would have been able to progress in the regular/gifted education program with accommodations. She was not provided the special education services she needed, because her achievement test scores were compared with the mean as if she were being considered as a 3 to 5 year old for early intervention. Her achievement test scores were not compared with her IQ score, which would have shown a **severe discrepancy between achievement and intellectual ability**.

Conclusion

The current definition of a specific learning disability is inadequate and subject to misinterpretation by school psychologists and other educational professionals. Often they apply the "deficiency model" of early intervention, requiring that a school age child be at least 2 years below grade level to be considered as having a specific learning disability to qualify as eligible for special education services. This misinterpretation denies above average and gifted students with learning disabilities their right to FAPE, when their achievement is near average. These children are often referred to as lazy, and told if they only tried harder they could do it. Not only are these children not being given what they need to reach their potential, they suffer increased frustration and deterioration, academically and emotionally, as they move from grade to grade falling further and further behind their peers. The "discrepancy model" of a specific learning disability must be clearly defined for application in determination of eligibility of school age students for special education services.

Recommendation

Include in 22 Pa. Code, Chapter 14, Section 14.101, an explicitly quantified definition for "a severe discrepancy between achievement and intellectual ability" applicable to the criteria for determining the existence of a specific learning disability and eligibility for special education services. A "severe discrepancy between achievement and intellectual ability" is a discrepancy of **1.5 standard deviations** between achievement as measured by a standardized achievement test, and intellectual ability as measured by an IQ test.

Marianne T. Chiduck

Original; 2144



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2000 OCT -2 AM 9:41

Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

REGULATORY
REVIEW COMMISSION



September 29, 2000

Mr. & Mrs. James Donovan
632 Main Street
Dickson City, PA 18519

Dear Mr. & Mrs. Donovan:

Thank you for your letter dated September 15, 2000 on proposed revisions to regulations Chapter 14 (special education services and programs).

Your letter is considered as official public comment and is being shared with all members of the Board. Pursuant to the provisions of the Regulatory Review Act, copies of your comments are also being provided to the Independent Regulatory Review Commission (IRRC) and the chairmen of the House and Senate Education Committees.

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Sincerely yours,

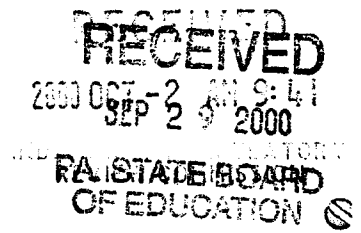
A handwritten signature in black ink, appearing to read "Peter H. Garland".

Peter H. Garland
Executive Director

cc: Members of the State Board
Senator Rhoades
Senator Schwartz
Representative Stairs
Representative Colafella
IRRC

Original: 2144

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



Re: Chapter 14 Regulations

Dear Mr. Mel Knowlton,

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

Mrs. Mrs. James J. Donovan
& Family

Original: 2144



Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

September 29, 2000

Dr. Richard E. Dale
Director of Special Services
CAIU
55 Miller Street
Box 489
Summerdale, PA 17093-0489

Dear Dr. Dale:

Thank you for your letter dated September 28, 2000 on proposed revisions to regulations Chapter 14 (special education services and programs).

Your letter is considered as official public comment and is being shared with all members of the Board. Pursuant to the provisions of the Regulatory Review Act, copies of your comments are also being provided to the Independent Regulatory Review Commission (IRRC) and the chairmen of the House and Senate Education Committees.

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Sincerely yours,

A handwritten signature in cursive script that reads "Peter H. Garland".

Peter H. Garland
Executive Director

cc: Members of the State Board
Senator Rhoades
Senator Schwartz
Representative Stairs
Representative Colafella
IRRC

RECEIVED
2000 OCT -2 PM 9:14
REGULATORY COMMISSION



Original: 2144

Providing Educational Services to the Capital Region

Division of Special Services • 55 Miller Street • P.O. Box 489 • Summerdale, PA 17093-0489
Phone 717-732-8400 ext. 504; Fax 717-732-8414; TDD 717-732-8422

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2000 OCT -2 AM 9:41
REVIEW COMMISSION

28 September 2000

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

RECEIVED
SEP 29 2000
DEPARTMENT
OF EDUCATION

Dear Dr. Garland:

Please consider this letter as public comment in response to the notice of Proposed Rulemaking in the 2 September 2000 *Pennsylvania Bulletin* regarding amending 22 Pa. Code Chapter 14 and deleting Chapter 342. These comments represent my own professional views, and I appreciate your consideration of my concerns and recommendations.

For your convenience, I have clearly identified the specific sections of the proposed regulations about which I am commenting. I have organized my comments into two sections: first, comments regarding proposed revisions about which I have substantive concerns and recommendations; and, second, comments about which I have technical concerns and recommendations. For each area, I have provided you with a comment, as well as a recommendation, if applicable.

As you know from my past letters, testimony, and participation in roundtable discussions, I strongly support the State Board's efforts to align Pennsylvania's special education rules with the federal requirements in a way which allows educators and parents to focus on implementing the already procedurally extensive requirements of the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97). Time and resources spent on disputes and confusion caused by unnecessary differences — in sequence, in terminology, and in substance — between federal and state requirements are time and resources not spent directly serving children with disabilities. The regulations governing implementation of IDEA '97 provide sufficient regulatory protection for children with disabilities and their parents with few exceptions.

One exception with which I agree strongly is the maintenance of screening requirements under proposed §14.122 which mirrors existing regulations related to instructional support. Despite the current administration's lack of enthusiasm for instructional support, there is ample empirical evidence that the Instructional Support Team initiative in Pennsylvania succeeded in both increasing student success and in improving educational practices in the classroom. Another exception with which I strongly agree is the maintenance of current language regarding facilities. Securing and maintaining adequate classroom space for intermediate unit classes is an area of on-going concern, and having regulations in this area is an important part of the solution. The missing part of the solution is Department enforcement of these regulations.

SUBSTANTIVE CONCERNS AND RECOMMENDATIONS

§14.141. Educational Placement.

Comment

Proposed subsection (3), regarding classes in which children from more than one district are placed, would require caseloads to adhere to either the district policy in which the class is located or, when the class is located in other than a school district, to the referring district caseload chart with the lowest number of student enrollment for the class. This would be an impossible regulation to implement for intermediate units, as well as to monitor by the Department. First, regarding district-based classes, intermediate units cannot be expected to adhere to the caseloads of the district in which the class is located. We develop programs to meet the needs of multiple districts and multiple children; to do so, we need the ability to plan with certainty for caseloads in classes we operate. A class we operate in District A one year may have to move to District B the next. Why should different caseloads in the two Districts disrupt the integrity of a functioning classroom, as well as sever positive teacher-student and student-student relationships, by forcing students' educational placements to be changed merely because of a caseload regulation difference between two districts? Second, and even worse, intermediate units simply would not be able to comply with the caseloads of referring districts in classes not located in school districts. Given the mobility of children with disabilities and the fluctuation of placements into and out of our classes, caseload limits could literally change every day in such classes. The ability of children with disabilities to receive a free appropriate public education should not be held hostage by differentials between district caseload limits, limits which may be the result of political decisions instead of decisions based on research.

Recommendation

In classes operated by districts or intermediate units in which children from multiple districts are placed, the rules should require that such classes adhere to the caseload numbers recommended in §14.142. This would not only afford protection to children, but also would provide the operators of such classes with predictability, a critical feature for effective administrative planning.

Comment

Under proposed subsection (6)(iii), school districts would be expected to establish an age range limit for elementary and secondary classes as part of the special education plan. What is the research base for imposing this requirement? Such arbitrary limits severely hamper the ability of school districts to program for children with disabilities. Deviation from the recommended age ranges would have to be justified in the district's special education plan. In the current rules, justification can be made in the student's Individualized Education Program (IEP), which can be done in a more timely manner than amending the special education plan. Furthermore, determining age ranges has always been a poorly defined area. The Bureau of Special Education has never made it clear **how** the age range between students should be calculated. Some special education advisers use years, and some use years and months. This causes confusion in the field.

Recommendation

The most desirable action by the State Board would be to eliminate all language in proposed Chapter 14 regarding age range. What is the compelling public interest to regulate in excess of the IDEA '97 requirements? Short of elimination of the requirement entirely, the Board should make the following changes. First, change the justification for deviation from a special education plan revision to justification in the IEP. The rules should make it clear that such justification is only necessary in the IEP of a student whose

placement in a class causes an age range deviation. Second, clarify in the regulations that months are not to be considered in determining age range. For example, to determine the age range between two students, the students' ages in **years**, not years and months, would be subtracted from each other. Third, the regulations should address multi-district classes operated by intermediate units. To what age range limits must such classes adhere, if any?

Comment

What is the research base for the recommended maximum caseloads under proposed §14.142? The current Director of the Bureau of Special Education has stressed the importance of educators basing their practices on research and evidence. Why is this matter different? Furthermore, what is the compelling public interest at stake? The recommended caseload numbers are an example of caving in to special interests for political expediency, rather than being an example of good public policymaking based on what research tells us is best practice for children with disabilities.

TECHNICAL CONCERNS AND RECOMMENDATIONS

§14.101. Definitions

Comment

The definition of "developmental delay" is unnecessarily wordy.

Recommendation

Change (i) to read: "The child's score on a developmental assessment instrument, which yields a score in months, indicates"

Comment

In the definition of "early intervention agency," the term "mutually agreed upon written arrangement" is used.

Recommendation

Place a hyphen between the words "agreed" and "upon" to align with terminology in Act 212 of 1990 (11 P.S. §875-103).

§14.103. Terminology related to Federal regulations.

Comment

The proposed regulation applies the federal term "local educational agency" to "an intermediate unit, school district, State operated program or facility or other *public organization providing* [emphasis mine] educational services to children with disabilities or providing early intervention services." There are instances where public organizations may well be "providing" services to children with disabilities – for example, under contract to a school district or intermediate unit – but certainly such organizations are not "local educational agencies" as defined under 34 CFR §300.18.

Recommendation

Drop the phrase "or other public organization" from §14.103.

§14.123. Evaluation.

Comment

Under proposed subsection (a), school psychologists would be part of the group reviewing evaluation materials "when appropriate." What is the process for determining when such membership is appropriate?

Recommendation

The rules should define a process for determining when it is appropriate for a school psychologist to be included in the group reviewing evaluation materials to determine eligibility. This process should include the criteria for making such decisions, as well as **who** has the authority to do so. The federal regulations implementing IDEA '97 do not require a psychologist's participation in groups determining eligibility, although sometimes a psychologist can fulfill a required role. For example, a psychologist is one of three suggested persons who can conduct individual diagnostic examinations under 34 CFR §300.540(b). Ultimately, however, determinations about **who** such teams should include must be made on an individual, case-by-case basis at the local level, the same level at which decisions are made regarding **what** an individual evaluation should include.

§14.124. Reevaluation.

Comment

Under proposed subsection (a), school psychologists would be part of the group reviewing evaluation materials "where appropriate." Why is this terminology different from proposed §14.123(a), which uses the word "when?" "When" and "where" have different meanings. Was this intentional?

Recommendation

If this difference was intentional, then the rules should define a process for determining where it is appropriate for a school psychologist to be included in the group determining continued eligibility. This process should include the criteria for making such decisions, as well as **who** has the authority to do so. If this difference was **not** intentional, then the Board should settle on which term – when or where – is appropriate, and then define the process for making this determination in this section the same as under §14.123.

§14.131. IEP.

Comment

Proposed subsection (a)(2) presumes that due process proceedings will automatically take place in conjunction with implementation of an interim IEP in move-in situations. This is not always the case.

Recommendation

The last part of (a)(2) should read: "...until a new IEP is developed and implemented [and] or until the completion of due process proceedings under this chapter."

Comment

Proposed subsection (3) describes what districts may do in interstate transfer situations, but does not describe other alternatives. What if a district does not want to place the student in regular education, but wants to implement the out-of-state IEP?

Recommendation

Since subsection (3) is simply a reflection of longstanding federal policy, why does it not include the rest of the federal policy on this topic? Additional language from the federal policy should be included in this subsection to describe when and how a district could adopt and implement an out-of-state evaluation and IEP.

Comment

Proposed subsection (b) would require districts to designate persons [emphasis mine] responsible to coordinate transition activities. While transition is a critical component of the special education process, some districts, because of their size, do not need multiple staff so designated.

Recommendation

Change this language to: "...each school district shall designate [persons] sufficient staff [responsible] to coordinate transition activities."

§14.132. ESY.

Comment

In proposed subsection (1), the word "districts" should not be plural.

Recommendation

Change the word "districts" to "district."

Comment

Proposed subsection (2) is grammatically incorrect.

Recommendation

Change to: "...consider the following factors, [however,] but no single factor shall be considered determinative."

§14.133. Behavior support.

Comment

This section uses the terms "behavior support" and "behavior management." The term-of-art, as used in IDEA '97, is "behavioral support." "Behavior management" has a negative connotation.

Recommendation

Change all references to "behavioral support."

§14.141. Educational placement.

Comment

The definitions of "Full-time," "Itinerant," "Part-time," and "Resource" are not clear. These definitions have been lifted from current regulations, and the current definitions have never been clear to districts. Too many of the words within these definitions are ambiguous and open to interpretation, and the Department has not provided consistent guidance in this area. For example, regarding "Full-time," what constitutes "nonacademic

and extracurricular activities?" Is physical education nonacademic? What about art, music, and industrial arts/technology? I would argue that the latter are academic subjects. Others would not. In either case, however, it makes a difference regarding whether or not a class is considered "full-time." Furthermore, there has been longstanding confusion over whether full-time applies to a class or to a student. I routinely get phone calls from districts asking whether or not a student who needs a part-time level of intervention can receive it in a full-time class, or whether a student who needs emotional support can receive that service in a learning support class. If students are to receive programs and services based on need, and not on what is available, the proposed educational placement regulations do not support that concept.

Recommendation

The Board should eliminate caseload requirements. What is the compelling public interest requiring them? Anecdotal horror stories predicting rampant abuse by districts and intermediate units should not drive public policy. Truly, across Pennsylvania, special education administrators are developing programs to meet the unique needs of children with disabilities as determined by those unique needs. The number of students who can be on a teacher's caseload can only be determined by knowing the needs of those students and the capacity of the local educational system to support those needs. If a student would not be able to receive a free appropriate public education (FAPE) – that is, if a student's IEP could not be implemented – by a teacher because of the number of students on that teacher's caseload, the IEP team, which includes the parents, should not recommend such a placement. If such a placement is made and needs to be modified, the parent can request such a modification and pursue due process if necessary to protect their child's entitlement to FAPE.

If the State Board feels that caseload numbers are required by a compelling public interest, it needs to investigate a radically different way to regulate in this area, a way which **both** maintains caseload limits **and** supports the ability of school districts and intermediate units to program in a flexible way to meet the unique needs of children with disabilities. I continue to support a system which considers the complexity of IEPs in determining caseloads, perhaps through some sort of weighted approach. The reality in the field is that few teachers have homogeneous IEPs. That is, few teachers have students with the same needs in the area of level of intervention and type of support. Given that reality, imposing the proposed caseload recommendations structure makes little sense.

§14.143. Disciplinary placements.

Comment

Proposed subsection (a) is not clear.

Recommendation

Change to: "... a series of nonconsecutive removals from school [occurring on] totaling more than"

§14.153. Evaluation.

Comment

Under proposed subsection (3), the term "MDT" appears out of context.

Recommendation

Establish a basis for including this term in the regulations. What IDEA '97 regulation does the MDT fulfill?

Comment

Under proposed subsection (5), I interpret the language to mean that a certified school psychologist is never required as part of a reevaluation for children with disabilities who are less than school age (evaluations do not determine "continued eligibility"). If that is an accurate interpretation, why is this provision important for children with disabilities who are school age, but not for children who are less than school age? Also, does this mean that a certified school psychologist is required as part of evaluations for children who are thought to be eligible for early intervention?

Recommendation

This entire section needs to be revised to make it clear when, if at all, a certified school psychologist is required as part of evaluations and reevaluations for children of less than school age.

§14.161. Prehearing conferences.

Comment

In proposed subsections (1), (2), and (3), the regulations do not include provisions for early intervention agencies.

Recommendation

Add language (such as "or early intervention agency" and "or early intervention agency chief administrative officer") in appropriate places.

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

Comment

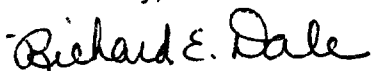
The concept in proposed subsection (i) is a welcome addition to the regulations. However, it is worded weakly.

Recommendation

Change to: "Parents may be represented only by legal counsel during impartial due process hearings. However, they may be [and] accompanied and advised"

Thank you for the opportunity to provide you with public comment regarding the proposed regulations. If you have any questions about my concerns or recommendations, I would be happy to discuss them with you at your convenience.

Sincerely,



Richard E. Dale, D.Ed.
Director of Special Services

cc: G. Zehner, J. Warnock

Original: 2144



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2000 OCT -2 AM 9:42

Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

REGULATORY
REVIEW COMMISSION



September 28, 2000

Ms. Ambry Ward
22 Oxford Court
Tareyton Estates
Langhorne, PA 19047

Dear Ms. Ward:

Thank you for your letter dated September 24, 2000 on proposed revisions to regulations Chapter 14 (special education services and programs).

Your letter is considered as official public comment and is being shared with all members of the Board. Pursuant to the provisions of the Regulatory Review Act, copies of your comments are also being provided to the Independent Regulatory Review Commission (IRRC) and the chairmen of the House and Senate Education Committees.

Be assured that your comments will be considered carefully in the development of the final-form of these regulations.

Recent amendments to Regulatory Review Act include a provision that the final-form of regulations be mailed to public commentators at their request. While no longer required to do so, the Board will continue its practice of sending the final-form of the regulations to all public commentators. Therefore, it will not be necessary for you to make a specific request for it.

Sincerely yours,

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

Peter H. Garland
Executive Director

cc: Members of the State Board
Senator Rhoades
Senator Schwartz
Representative Stairs
Representative Colafella
IRRC

Original: 2144

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REGULATORY
REVIEW COMMISSION



22 Oxford Court
Tareyton Estates
Langhorne, Pa. 19047
September 24, 2000

Eugene Hickok
Secretary of Education
Pennsylvania Dept. of Education
333 Market Street
Harrisburg, Pa. 17101

RECEIVED

SEP 28 2000

PENNSYLVANIA STATE BOARD
OF EDUCATION

Dear Mr. Hickok:

I am writing to you as a parent of a 12 year old son, David who has Pervasive Developmental Disorder (PDD-NOS), which is within the Autism Spectrum Disorder. David has benefited from Early Intervention Placements from ages 3 to 5. Since that time, he has been placed with the Bucks County Intermediate No. 22 in Autistic/PDD Support classes. I have been immensely appreciative and proud about Bucks County Intermediate Unit's programs for children with Autism Spectrum Disorder.

The proposed Chapter 14 Special Education Regulations give parents, and advocates significant concerns. These proposed regulations may aim to be in compliance with the Federal IDEA 1997 Regulations, but do not. The language in the proposed Chapter 14 Regulations is quite nebulous and nonspecific, thus leaving too much room and opportunity for a too wide range of interpretations and implementations of Special Education Programs and IEPs by individual school districts and Intermediate Units. The content of the proposed regulations are not "user friendly" for parents thus creating negativity in the relationship between Educational administrators/personnel and parents and advocates for children with disabilities.

The Pennsylvania Department of Education has not given sufficient time for parents, and advocates to be an integral part of the development of the proposed regulations, public hearings and comments. I am requesting your department to reschedule for additional public hearings and comments regarding the proposed Chapter 14 Special

Education Regulations.

More importantly, it is tragic that the Pennsylvania Department of Education is aiming to change/modify or not continue its current Special Education Regulations, which have superseded the Federal IDEA 1997 Regulations. Pennsylvania Department of Education needs to reestablish itself as a leader in Special Education Regulations and Programs for other states to look up to and follow suit.

Quality Special Educutions Regulations and Programs are the best investment that we as state administrators and tax payers can make for children with disabilities. If quality special education and legal safeguards are not provided, Pennsylvania will be paying for more funding for our children when they become adults. This increased funding will be obvious spent in supportive services and placements (and some inappropriate placements such as the correctional facilities) when our children become adults.

Please pay attention to the fact that children with Autism Spectrum Disorders are being increasingly diagnosed in Pennsylvania, and throughout the USA.

One can debate endlessly the reasons for this increase, but the fact of the matter is that the children with Autism are already here in Pennsylvania. As moral and just state administrators in the Pennsylvania Department of Education, our children deserve the best special education. If you have a child, grandchild, nephew/niece and child age friend with Autism Spectrum Disorder, you would be also be advocating for this as well.

Yes, I can go through point by point in the Proposed Chapter 14 Special Education Regulations, but the fact of the matter, is parents and advocates need the time and opportunity to work with the Pennsylvania Department of Education in a non-adversary manner.

Is it not an unfortunate suspicion on my part, that the Department of Education is aiming to decrease Special Education Funding and spending at the expense of our children?

Your consideration of what I stated here and what other parents have put before you in the current public hearings is necessary and appreciated.

All children with or without disabilities deserve a quality education that prepare them to be functional adults who can contribute to their community as employed, law abiding and moral citizens. It begins with being adults being moral and just for the care and education of all children.

Sincerely yours,
Ambry Ward
Ambry Ward
David's Mother
ambryw@aol.com

Cc:
Governor Tom Ridge
Peter Garland, State Board of Education
Independent Regulatory Review Commission

Original: 2144

Benkovic, Susan

*Responded by e-mail
9/29/00*

From: Carol Lynch [clynch@crafttech.com]
Sent: Thursday, September 28, 2000 8:54 PM
To: 00statbd@psupen.psu.edu
Subject: Proposed Special Education Regulations

I am very concerned to hear that proposed language would prevent families from being represented by a lay advocate. Since many families do not have access to (or can afford) special education attorneys, this proposed language would have the effect of making those families without sufficient resources unable to pursue their rights under special education law.

In addition, my understanding is that the proposed regulations still do not respond to parents' concerns regarding class size and timelines for implementation of services.

I implore the Department of Education and the Commonwealth of Pennsylvania to listen to parents and advocates. Do the right thing!

Carol Lynch
401 Palmers Lane
Wallingford, PA 19086

RECEIVED
2000 OCT -2 AM 9:40
REGULATORY
REVIEW COMMISSION

Original: 2144

*Responded by e-mail
9/29/00*

Benkovic, Susan

From: Dego74@aol.com
Sent: Thursday, September 28, 2000 4:59 PM
To: 00statbd@email.cas.psu.edu
Cc: Dego74@aol.com
Subject: Special Education Concerns

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2000 OCT -2 AM 9:40

REGULATORY
REVIEW COMMISSION

September 28, 2000

Gentlemen/Ladies of the PA State Board of Education:

Please accept this email as my written statement with my personal concerns regarding the Special Education Laws in Chapters 14 & 342 especially with the altering of the language governing who can assist families during Due Process Hearings.

This year, my school district filed for a due process hearing concerning the educational placement of my child. The only help I had was ADVOCATES. and I thank God I did. We parents of children with disabilities need this support. I am still unemployed and if I was employed, I know I could not financially afford to hire a good Special Education Lawyer. with a retainer fee of at least \$2500 and an hourly fee ranging from \$150 to \$700. The \$150 would be equal to one (1) weekly pay check and the \$700 would be equal to a monthly net income. It would take me months even years to save enough to meet the retainer fee of \$2500 and then it would probably be too late for my child.

I feel the PA Dept of Education is worried, that since parents are being educated about their rights and those of their children, and using the help of an Advocate and their own advocacy on their children's behalf, that they are exercising these procedural safeguards in an economic manner that is affordable to their budgets. Not only is the PDE worried about that, but I feel they are worried that we as parents and advocates are more and more winning what is lawfully and rightfully guaranteed " a free appropriate public education."

It seems that it is okay to allow the school districts their rights in defending themselves at "public expense" from the taxes that the people pay, then 'WHY' is it not okay, in the eyes of the PDE, to say that the parent cannot have another person of their choice attend due process hearing??

I represented myself at an unemployment hearing 1 1/2 years ago. All I needed was, to tell the truth and have the facts documented, which I had.

I won my right to my unemployment! The only reason my x-employer

appealed the decision was so that they would not have to pay a fee that is mandatory if an ex-employee tries to sign up for unemployment. The 3 panel judge found me creditable that I left my place of employment of 9 1/2 years services to care for my son who has severe psychological problems and I had no one to help me take care of him while I worked. I had no choice but to leave my job.

So, please, don't tell me, that I as a parent, cannot have someone with me for support and help which is emotionally and educationally needed to fight the child's educational rights. I would love to trade places with one of you for 1 month or even 3 months and have one of you live off of my income monthly. Then I could live on your income and the way you see the representation of advocates for parents at due process hearings as not acceptable, well, with your income I could afford to hire a good special education lawyer to fight for my child's rights, couldn't I????

Another thing that I find interesting, is the fact that , we parents and advocates, are not spending the taxpayers money. Most advocates do not get paid. They do what they do because they love the special children they have and also they have a love and passion for all the other children as well.

Thank you for allowing me to voice my concerns.

Respectfully yours,
A Very Concerned Parent
with 1 child with a disability

Original: 2144



Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

September 28, 2000

Ms. Patricia Benvenuto
Director, Children's Services
UCP of Philadelphia
102 East Mermaid Lane
Philadelphia, PA 19118

Dear Ms. Benvenuto:

Thank you for your letter dated September 21, 2000 on proposed revisions to regulations Chapter 14 (special education services and programs).

Your letter is considered as official public comment and is being shared with all members of the Board. Pursuant to the provisions of the Regulatory Review Act, copies of your comments are also being provided to the Independent Regulatory Review Commission (IRRC) and the chairmen of the House and Senate Education Committees.

Be assured that your comments will be considered carefully in the development of the final-form of these regulations.

Recent amendments to Regulatory Review Act include a provision that the final-form of regulations be mailed to public commentators at their request. While no longer required to do so, the Board will continue its practice of sending the final-form of the regulations to all public commentators. Therefore, it will not be necessary for you to make a specific request for it.

Sincerely yours,

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

Peter H. Garland
Executive Director

cc: Members of the State Board
Senator Rhoades
Senator Schwartz
Representative Stairs
Representative Colafella
IRRC

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2000 OCT -2 PM 9:42
REGULATORY REVIEW COMMISSION

Original: 0144



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2000 OCT -2 AM 9:42
INTEGRATION
REVIEW COMMISSION

UCP of Philadelphia and Vicinity
102 East Mermaid Lane
Philadelphia, PA 19118
(215) 242-4200
E-mail: ucphila@aol.com
www.ucpphila.org

Stephen A. Sheridan
Executive Director

RECEIVED

SEP 29 2000

INTEGRATION BOARD
OF EDUCATION

9/21/00 - Oral testimony at EISC 1:55 P.M.

My name is Patricia Benvenuto. I am Director of Children's Services for UCP of Philadelphia.

I would first encourage the Department of Education to extend the comment period for these proposed regulations. The information I have received from my provider organizations and from our MAWA holder noted that the scheduled dates for testimony were only tentative. I am concerned that early intervention parents were not prepared to offer testimony in this limited period of time.

I am concerned that the proposed regulations are difficult for parents and providers to read and understand. Reference to federal regulations should be written out and not just incorporated by a reference number.

I believe that the definition of "eligible young child" whose disability or developmental delay results in a need for early intervention services receive special education *or* related services. Under current definition, if a child has a severe motor delay, and needs only Physical Therapy, the child is eligible for that service. Under proposed definition, the child would be ineligible for any service. It has been my experience in 23 years of employment at UCP that many of our children with conditions such as cerebral palsy, spina bifida and muscular dystrophy have greatly benefitted from their Early Intervention services that have only included physical therapy.

I would encourage the Board of Education to maintain the current re-evaluation period (every 2 years for children 5-21 years; every year for children 3-5). Most children's development and subsequent needs change considerably in a year and therefore deserve a revaluation of their skills.

Current law requires that districts provide agreed upon services within 10 school days of the completion of a child's IEP. This is an important safeguard for parents, who should have guaranteed timelines defined.

Defined parameters for teacher caseloads and for the age range of students in those classes should remain as prescribed in current regulations. Allowing districts to set their own policy may lead to unreasonable standards that do not allow teachers sufficient time to address the individual needs of their children.

Thank you for allowing me the opportunity to offer this testimony.

A handwritten signature in black ink, reading "Patricia Benvenuto". The signature is written in a cursive style with a long, sweeping horizontal line extending to the right.

Patricia Benvenuto, M.Ed.
Director, Children's Services

Original: 2144

Robert Nyce
Independent Regulatory Review Commission
333 Market Street
Harrisburg, PA 17101

Dear Mr. Nyce,

I am writing this letter to express my concern over the PA State Board of Education's proposal to change the State Special Education Services and Programs 22 Pa. Code, Chapter 14, and to delete Chapter 342. I understand that these changes are meant to "streamline" PA regulations implementing IDEA, however I encourage the Board to also consider the effect these changes will have on the children and families they are meant to help. I fear that these changes will result in less comprehensive definitions, the elimination of required short-term objective criteria for IEPs, reevaluations only every two years, unclear guidelines whether a child could receive therapy if they have a delay in only one developmental area, and insufficient requirements and qualifications for service coordinators.

In 1996 my son was diagnosed with neurological deafness as the age of eight months. Since that time my son and family have received home visits, speech and hearing therapy, professional counsel, Language Acquisition Preschool, and countless notes and phone calls of support from qualified Early Intervention and Intermediate Unit professionals. As I share my experience in this journey with others, I continue to hear how the support for families of children with disabilities in Pennsylvania is superior to many surrounding states. I also realize that the quality of support that families in Pennsylvania receive today has improved in the last twenty years. It would be a shame to lose the outstanding quality of support that we enjoy today in Pennsylvania in the name of "streamlining" regulations.

I could support changing these regulations only if I was convinced that the result would bring improved support to the families of children with disabilities. Since I am not convinced of this, I urge the PA House and Senate to **not** pass these proposed changes.

Thank you for your thoughtful consideration!

Frederick J. Zeiset

Frederick J. Zeiset

RECEIVED
2000 SEP 27 AM 8:41
INDEPENDENT REGULATORY
REVIEW COMMISSION

Original: 2144



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2000 OCT -2 AM 9:42
REGULATORY
REVIEW COMMISSION

Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

September 27, 2000

Dr. Ronald A. Madle
17 Ward Way
Mifflinburg, PA 17844-0111

Dear Dr. Madle:

Thank you for your letter dated September 25, 2000 on proposed revisions to regulations Chapter 14 (special education services and programs).

Your letter is considered as official public comment and is being shared with all members of the Board. Pursuant to the provisions of the Regulatory Review Act, copies of your comments are also being provided to the Independent Regulatory Review Commission (IRRC) and the chairmen of the House and Senate Education Committees.

Be assured that your comments will be considered carefully in the development of the final-form of these regulations.

Recent amendments to Regulatory Review Act include a provision that the final-form of regulations be mailed to public commentators at their request. While no longer required to do so, the Board will continue its practice of sending the final-form of the regulations to all public commentators. Therefore, it will not be necessary for you to make a specific request for it.

Sincerely yours,

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

Peter H. Garland
Executive Director

cc: Members of the State Board
Senator Rhoades
Senator Schwartz
Representative Stairs
Representative Colafella
IRRC

Original: 2144

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2000 OCT -2 AM 9:42
REVIEW COMMISSION

17 Ward Way
Mifflinburg, PA 17844-0111
September 25, 2000

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

RECEIVED
SEP 27 2000
PA. STATE BOARD
OF EDUCATION

Dear Dr. Garland:

I appreciate the opportunity provided by the State Board of Education to comment on the Proposed Rulemaking entitled "Special Education Programs and Services" published in the September 2, 2000 Pennsylvania Bulletin. I offer the following comments as a practicing school psychologist in a rural district, as well as a trainer of school psychologists at a Pennsylvania university. Including my term as a psychologist with the Pennsylvania Department of Public Welfare I have 33 years of experience in working with children and adults with disabilities.

I recognize the substantial time and effort that has gone into this process of revision and I support the desire to minimize the differences between Federal and Pennsylvania requirements. I have several areas of concern, however, with the current wording in the proposed regulations.

Role and Involvement of the School Psychologist

Some of my colleagues representing both the Pennsylvania Psychological Association and the Association of School Psychologists in Pennsylvania have eloquently expressed the many important reasons for school psychologists to be mandated members of the evaluation team. I wholeheartedly agree with their statements but would like to add some additional concerns about the proposed wording.

There are two highly related yet separate issues related to the role and involvement of certified school psychologists in special education evaluations. The first of these is whether school psychologists should be mandated participants on the group that reviews the evaluation findings. This aspect seems to be a primary focus of other comments that I have seen.

Proposed §14.123(a) states that "the group of qualified professionals, which reviews the evaluation materials . . . shall include a certified school psychologist, when appropriate." I agree with the underlying philosophy that school psychologists need not be mandated as members of all evaluation-review teams, regardless of the nature of the student's suspected exceptionality or the type of educational needs expressed. As written, however, this wording places unrealistic demands on individual school districts and administrators, with a limited knowledge of disabilities, to deduce the types of qualified professionals needed to review the obtained evaluations to determine exceptionality. Who will be qualified to determine "when appropriate," and by what criteria? Obviously a similar concern should exist about the parallel statement in §14.124(a) relating to reevaluations.

I believe that a reasonable resolution would be to indicate that participation of a school psychologist is required for specified disabilities (at least specific learning disability, mental retardation, emotional disturbance, autism, and traumatic brain injury) and be "when appropriate" to the child's perceived needs for the remaining disabilities.

The second issue related to the role and involvement of certified school psychologists pertains to the need for school psychologists (as well as other qualified professionals such as speech and language specialists, physicians, vision specialists, and so forth) to conduct assessments as input to the multidisciplinary evaluation process. When will assessment by a school psychologist and/or other qualified professional be needed? This again places substantial decision-making burdens on school personnel to decide this.

As indicated in Dr. McMullen's testimony for PPA, large numbers of exceptional children still require intellectual and/or social-emotional-behavioral assessments. These are functions that cannot be legally or properly conducted by other school personnel as clearly indicated in sources such as IDEA, the Pennsylvania Psychologists Practice Act, PDE Certification and Staffing Policies and Guidelines (CPSGs), and test publisher requirements for test usage. All of these sources exist to protect the rights of "clients" and ensure that services provided are performed professionally and ethically. Some examples of these requirements include the following.

- 1) Psychological services are defined as a related service in the IDEA sections being proposed for adoption by reference. In addition to other functions this definition includes "administering psychological and educational tests, and other assessment procedures; interpreting assessment results; and obtaining, interpreting, and integrating information about child behavior and conditions relating to learning." These functions are not contained in the definitions of any other related service providers or instructional staff.
- 2) CSPG #68 delineates the functions reserved to a certified school psychologist in Pennsylvania. As part of this statement it indicates that "[t]he administration of advanced individual or group tests of intelligence, behavioral tendencies, psychological and emotional adjustment, etc. which require specialized and advanced training for administering, analyzing, and interpreting are reserved to certified school psychologists." Again, who else would be able to do these functions?
- 3) Test publisher directions for intellectual, socioemotional, and behavioral measures typically require that the person using them must have "completed a recognized graduate training program in psychology with appropriate coursework and supervised practical experience in the administration and interpretation of clinical assessment instruments." IDEA, of course, requires that test publisher directions must be followed under the protection-in-evaluation provisions.
- 4) The practice of psychology is regulated by the State Board of Psychology under the Pennsylvania Psychologists Practice Act. This Act requires that persons who practice psychology, which includes "measuring and testing of personality, intelligence, aptitudes, and emotions," must have a valid license or be covered by one of the exemptions in the law. School psychologists have been exempted because of the nature of their certification programs under Chapter 49. Specifically the law says "(4) Nothing in this act shall be construed to limit the practice of psychology or use of an official title . . . [by] school psychologists in the public and private schools of the Commonwealth . . ." Other school personnel, however, are not exempt from licensure to perform these functions and could be seen as practicing psychology without a license if they do.

My concern here is that a number of requirements even in the current regulations are not followed because, rather than being unambiguously stated, they require complex coordination of multiple sections of the same or different laws and regulations to understand them fully. This situation places an unreasonable demand on busy school administrators to comply with various statutory and regulatory laws.

The current disability definitions in the Chapter 14 have provided some guidance for school districts as to the need for psychological, medical, speech and language, and other qualified professional evaluators in assessing the various disabilities. What guidance will school districts now have as to when evaluation by a school psychologist, a physician, a vision specialist, and so forth is needed?

Several states (e.g., Tennessee and Georgia) that have released regulations following IDEA'97 have provided LEAs with detailed specification of the types of professionals and information needed for each type of disability being considered. This would appear to be not only consistent with, but required by, IDEA since the "State [must] have on file policies and procedures that ensure that the requirements of §300.530-300.536 (dealing with evaluations) are met." This omission raises the very real potential for school district personnel to inadvertently engage in practices that involve the illegal practice of regulated professions (psychology, medicine, etc.) without a license, or at least for increasing hearings regarding the appropriateness of the evaluations conducted.

Please remember that this is a separate and distinct issue from whether certified school psychologists are required on the group of professionals that reviews the evaluation data to determine eligibility. This goes to the very core of meeting the IDEA requirement that a full and individual evaluation is conducted by qualified professionals.

Apparent Change in Definition of Mental Retardation

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

With most disabilities the changes are relatively minor and are unlikely to cause significant problems. This is not the case with the definition of mental retardation. Adoption of the IDEA definition of mental retardation represents a significant change. At this time children with IQs as high as 79 are being identified as mentally retarded since the current Pennsylvania definition indicates that students with "IQs of 80 or higher may not be considered mentally retarded." The IDEA definition (without additional regulatory clarification) suggests a cutoff of two standard deviations below the mean (i.e., IQ = 69 or lower), which is what all recognized diagnostic systems (e.g., AAMR, DSM-IV, ICD-10) have employed since approximately 1970. This also is the practice in all states except four (I believe they are Pennsylvania, Ohio, West Virginia, and Iowa). Such a change could reduce the number of children who are eligible under this (or any other) disability category by perhaps as 10,000 or more statewide.

While I personally support such a change to be consistent with nationally accepted practices, such a change should be made explicitly rather than by default. Failure to clarify this change (in either direction) will lead to haphazard and inconsistent implementation across the Commonwealth for many years.

Some people have suggested that the "IQ under 80" cutoff is contained in the PARC Consent Decree. It is not, however, as the term mental retardation was never defined in PARC. In fact, there was an objection raised (which was withdrawn but never resolved) during the PARC case because of the lack of a precise and operational definition of mental retardation!

Specific Wording Concerns

Additionally the specific wording of some sections may result in confusion that could easily be resolved at this stage of the regulatory process. I will address these next.

§14.101 defines MDT as a multidisciplinary team. The term multidisciplinary team, however, is used nowhere in the IDEA regulations. IDEA does reference a "group of qualified professionals" but this does not require a multidisciplinary team; these professionals could all in fact come from the same discipline. Actual definition of an MDT (by membership) is in regulations that will be deleted.

§14.131(a)(1) states the "comprehensive evaluation report" shall be disseminated. The term comprehensive evaluation report is never used in IDEA and is actually part of the regulations being deleted. I have discussed this with some PDE staff who believe this is covered in a BEC, but that BEC interprets regulations that will be deleted! I would suggest that the reference be, as in other parts of the Proposed Chapter 14 and IDEA, simply to the "evaluation report."

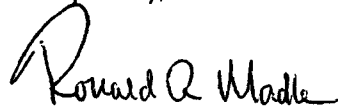
§14.124(b) states the "reevaluation report must be provided to the parent within 60 school days from the date that the request for reevaluation was received from the parent or teacher, or from the date that a determination is made by the agency that conditions warrant a reevaluation." Since IDEA, and by reference Pennsylvania, will now require a signed permission for reevaluations should this not be, as with initial evaluations, from the date consent was actually received?

§14.122(a)(4) can be confusing in that it could be read to suggest that eligibility might be determined during the screening process. The statement might be clearer if it were changed to read "(4) Identify students who may need evaluation for special education services and programs." This would be consistent with IDEA requirement that determination of eligibility for special education follows a full and individual evaluation.

§14.122(d) suggests referral for further special education evaluation would occur even if the assessed difficulties are a result of a lack of instruction or limited English proficiency. This might better read "... shall be formally referred for evaluation under §14.123 (relating to evaluation) if the difficulties are not due to a lack of instruction or limited English proficiency."

Once again, I would like to thank the Board for this opportunity to provide input into these important regulations which protect the rights of disabled children in the Commonwealth of Pennsylvania. I hope my comments, along with all others you receive, will be useful in the Board's development of final form regulations.

Respectfully,



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

Original: 2144



Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

September 27, 2000

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2000 OCT -2 AM 9:42

REGULATORY REVIEW COMMISSION



Ms. Carole Madle
17 Ward Way
Mifflinburg, PA 17844-0111

Dear Ms. Madle:

Thank you for your letter dated September 25, 2000 on proposed revisions to regulations Chapter 14 (special education services and programs).

Your letter is considered as official public comment and is being shared with all members of the Board. Pursuant to the provisions of the Regulatory Review Act, copies of your comments are also being provided to the Independent Regulatory Review Commission (IRRC) and the chairmen of the House and Senate Education Committees.

Be assured that your comments will be considered carefully in the development of the final-form of these regulations.

Recent amendments to Regulatory Review Act include a provision that the final-form of regulations be mailed to public commentators at their request. While no longer required to do so, the Board will continue its practice of sending the final-form of the regulations to all public commentators. Therefore, it will not be necessary for you to make a specific request for it.

Sincerely yours,

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

Peter H. Garland
Executive Director

cc: Members of the State Board
Senator Rhoades
Senator Schwartz
Representative Stairs
Representative Colafella
IRRC

Original: 2144

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2000 OCT -2 AM 9:42

REGULATORY
REVIEW COMMISSION

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

17 Ward Way
Mifflinburg, PA 17844-0111
September 25, 2000

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SEP 27 2000

PA. STATE BOARD
OF EDUCATION

Re: Chapter 14 Revisions

Dear Dr. Garland:

PDE's proposal to adopt IDEA by reference has much to recommend it. However, there are two areas of particular concern that I would like to call to your attention. The first involves the definition of mental retardation and the second involves lack of specificity in the requirements for evaluation for various disabilities.

1) Mental Retardation Definition: Current standards and practice in Pennsylvania permit identification of students with IQs up to 79 as mentally retarded provided other (specified) deficits are present. This is at-odds with definitions in the medical arena (e.g. DSM IV) and in most other states where IQs of 70 (or in some cases 75) and above exclude a student from being considered mentally retarded. When the current PA Regulations and Standards were revised around 1990, the initial draft specified a cut-off of below 70 for MR which would have changed the practice at the time. For whatever reason, the cut-off was changed before the regs and standards were finalized and the below 80 cut-off was maintained. My concern is that school districts need clear and specific direction from PDE as to whether we are continuing to identify students with IQs in the 70's as retarded. If not, districts will need to find another way to serve those students currently in special education who would no longer qualify without a state-specific definition. Please also note that the change, if it is intended to be made, will create the need to retest many students who would not otherwise be given a new IQ test; this will be a significant cost to districts. Without specification, I foresee hearings whether we do or do not identify students with IQs in the 70's as mentally retarded.

2) Evaluation requirements: With the proposal, PA is deleting the sections specifying what types of evaluations are required to assess the presence of the various disabilities. At the present time, a "full assessment and comprehensive report of a certified school psychologist" is required for a number of disabilities including Mental Retardation and Specific Learning Disability; evaluation by a physician is required to identify a student as having a Health Impairment or Physical Disability; similar specifications of requirements are listed for other disabilities. The statement in IDEA that evaluations must be done by "qualified professionals" is extremely vague. I am concerned that leaving the determination of who would be "qualified" completely unspecified will lead to further confusion and inconsistencies among districts and unnecessarily increase conflicts between families and schools.

Along with the thorough and helpful evaluations completed at local medical facilities or by private practitioners that parents share with my school, I regularly review reports from outside professionals "diagnosing" a disability based on limited understanding of the disability and an incomplete assessment of the child. Some parents only agree to permit the district to do additional assessment because we can show them that it is required in regs and standards. Some specific examples of areas where I see potential / pressure for large numbers of students being identified inappropriately:

- A clinically trained psychologist (whose primary background is with emotional issues and

adjustment) indicating that a child has a learning disability solely on the basis of an IQ test -
- There are legitimate differences in the way knowledgeable clinicians approach identification of a learning disability, but all involve assessing academic skills ("learning") directly in some way. Current standards require assessment by a school psychologist.

- A counselor saying a child has attention deficit hyperactivity disorder (ADHD) based on parent complaints about undisciplined behavior at home without checking on school functioning, whether there is a chaotic home life, or whether a health-related problem (uncorrected vision, lack of sleep, reaction to medication prescribed for asthma, thyroid problems) may be the source of the child's difficulties.-- Current standards require that a child be evaluated by a physician and a school psychologist before being identified as Other Health Impaired based on ADHD.
- Asperger's Syndrome, an autism spectrum disorder, is something about which many counselors and general practitioners are just now becoming aware (i.e., it is now a "hot" diagnosis). Current standards require that a child be evaluated by a physician who is qualified to make the diagnosis of autism as well as by a school psychologist. I am a PA licensed psychologist and PDE certified school psychologist. I have 30 years of interest in autism and have completed numerous workshops and four very recent graduate credits specifically on autism, and I still find the task of diagnosing an autism spectrum disorder intimidating. It is a complex diagnosis with numerous other similar conditions that need to be ruled out; yet I have heard many individuals who just saw a segment on a TV news show or attended an hour session at a conference who feel competent to make these distinctions -- A little knowledge truly can be a dangerous thing.

We do not do a service to children, families, or our Commonwealth by inappropriately classifying children as disabled. Services that meet the needs of the child start with an appropriate assessment.

Thank you for your consideration of these issues.

Sincerely,



Carole Madic, M.A.
Nationally Certified School Psychologist
PA Certified School Psychologist
PA Licensed Psychologist

Original 2144



Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

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2000 OCT -2 AM 9:42

REGULATORY REVIEW COMMISSION

September 27, 2000

Mr. Charles W. Jelley, Esq.
Tremba, Moreman & Jelley
229 South Maple Avenue, Suite 201
Greensburg, PA 15601

Dear Mr. Jelley:

Thank you for your letter dated September 25, 2000 on proposed revisions to regulations Chapter 14 (special education services and programs).

Your letter is considered as official public comment and is being shared with all members of the Board. Pursuant to the provisions of the Regulatory Review Act, copies of your comments are also being provided to the Independent Regulatory Review Commission (IRRC) and the chairmen of the House and Senate Education Committees.

Be assured that your comments will be considered carefully in the development of the final-form of these regulations.

Recent amendments to Regulatory Review Act include a provision that the final-form of regulations be mailed to public commentators at their request. While no longer required to do so, the Board will continue its practice of sending the final-form of the regulations to all public commentators. Therefore, it will not be necessary for you to make a specific request for it.

Sincerely yours,

A handwritten signature in cursive script that reads "Peter H. Garland".

Peter H. Garland
Executive Director

cc: Members of the State Board
Senator Rhoades
Senator Schwartz
Representative Stairs
Representative Colafella
IRRC

Original: 2144

TREMBA, MOREMAN & JELLEY

ATTORNEYS AT LAW

229 South Maple Avenue Suite 201
Greensburg, Pennsylvania 15601
(724) 838-7600 Fax (724) 838-8870

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INDUSTRIAL RELATIONS BOARD
ATTORNEY
REVIEW COMMISSION

September 25, 2000

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OCT 2 2000

STATE BOARD
OF EDUCATION

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

Dear Mr. Garland:

We are writing in reference to the proposed changes to the Special Education and Regulation. Specifically, we feel compelled to comment on 22 Pa. Code 14.162(i). It appears that a controversy is now arising concerning whether parents of children with mental retardation are allowed to represent themselves in due process hearings.

Specifically, on May 30, 1972, Secretary of Education, John C. Pittenger, issued the attached School Administrator's Memorandum. As you will note, the School Administrator's Memorandum implements the PARC Consent Decree. The due process procedure agreed to by the Commonwealth of Pennsylvania and the plaintiffs set forth in the Court Order specifically provide that "the parents or guardian of a child may be represented at a hearing by any person of his choosing, including legal counsel." (See, page 4, item (9) of PARC Consent Decree).

Accordingly, we believe that the regulations as originally drafted, accurately reflect the existing case law wherein parents of children with mental retardation are allowed to represent themselves at an Administrative Due Process Hearing. The proposed modification by the Attorney General's Office is inconsistent with current case law.

Very truly yours,

Charles W. Jelley
Charles W. Jelley, Esq. (RP)
CWJ/jrp/ADMIN

ENC: School Administrator's Memorandum

Margaret A. Tremba

Donald B. Moreman

Charles W. Jelley, LL.M.

Stephen M. Elek

Hugh E. Teitelbaum (of Counsel)

Original: 2122

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
OFFICE OF LEGAL COUNSEL

DATE: September 29, 2000

SUBJECT: Public Comment - #14-452
Early Intervention Services

TO: Robert E. Nyce
Independent Regulatory Review Commission

FROM: Ruth O'Brien *ROB*
Senior Assistant Counsel

Attac
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arding the Early Intervention Services

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Mary

RECEIVED
2000 OCT - 2 AM 9:54
INDEPENDENT REGULATORY
REVIEW COMMISSION

Mr. & Mrs. Robert Tillman
2633 Radeliffe Rd.
Broomall, PA-19008-2116
September 4, 2000

52

Original: 2122

Mr. Mel Knowlton
Office of Mental Retardation
P.O. Box 2675
Harrisburg, PA 17105-2675

2000 OCT -2 AM 9:54

INDEPENDENT REGULATORY
REVIEW COMMISSION

Dear Mr. Knowlton:

I am writing this letter, as a parent of a child with Down Syndrome, to all concerned parties regarding the impending proposed Early Intervention regulations published June 2, 2000.

There are numerous issues that are of immediate and grave concern to me, my daughter, and future generations. It is incomprehensible that there is the possibility of receiving an incomplete evaluation at the outset when these children (and these are human beings we are talking about) are already beginning life behind the eight ball.

Equally as horrifying is the thought that our children will be placed in the hands of totally unqualified and therefore unknowledgeable service coordinators. Aside from the occasional parents who know before hand of their child's diagnosis, you are dealing with shell-shocked parents who don't have all or maybe any idea of what services are available to them. They rely on the professional guidance of their service coordinator to guide them and inform them of all the opportunities for therapy in order to start these children out on the correct foot.

It should be an absolute requirement that each therapist, special education teacher, vision/hearing specialist, day-care teacher and any other professional that has worked with the child, be at the table for any IFSP to hear first-hand the progress and therefore future needs for any child. This is where a child's future is decided! Every piece of information from each professional is vital. This information most definitely needs to be in writing and it should be the authority of the IFSP team (OT, PT, Speech, etc.) to decide the appropriate future services and the correct environment since they have the direct contact under the right circumstances for their sessions with each child.

The timeliness for scheduling and implementation of every IFSP is critical! As every parent knows, time flies, and before one knows it, the child is three and transitioning into the IU. Any services missed, even for a few weeks, could drastically affect any child's progress and future placement in a chronologically appropriate class.

The system, as it presently exists, has enough pitfalls due to high turnover rates of coordinators who have an overabundance of cases, that any other short-changing of qualifications or unduly withholding of services due to untimely implementation of the IFSP, etc. will only disastrously affect each and every child needing these services.

All of these children, and the families providing their care, deserve all the services possible as suggested by the most knowledgeable and professional person possible. Please prevent any further breakdown of a delicate system by not allowing any of these regulations to pass.

Thank you for your consideration.

Sincerely,

Jacqueline M. Steinh-Tillman

Original: 2144

2000 OCT -2 AM 9:42

REGULATORY REVIEW COMMISSION



Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

September 27, 2000

Peter and Elizabeth Bell
200 Lafayette Avenue
Oreland, PA 19075

Dear Peter and Elizabeth Bell:

Thank you for your letter dated September 20, 2000 on proposed revisions to regulations Chapter 14 (special education services and programs).

Your letter is considered as official public comment and is being shared with all members of the Board. Pursuant to the provisions of the Regulatory Review Act, copies of your comments are also being provided to the Independent Regulatory Review Commission (IRRC) and the chairmen of the House and Senate Education Committees.

Be assured that your comments will be considered carefully in the development of the final-form of these regulations.

Recent amendments to Regulatory Review Act include a provision that the final-form of regulations be mailed to public commentators at their request. While no longer required to do so, the Board will continue its practice of sending the final-form of the regulations to all public commentators. Therefore, it will not be necessary for you to make a specific request for it.

Sincerely yours,

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

Peter H. Garland
Executive Director

cc: Members of the State Board
Senator Rhoades
Senator Schwartz
Representative Stairs
Representative Colafella
IRRC

Original: 2144

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2000 OCT -2 AM 9:42

REVIEW COMMISSION

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

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SEP 27 2000

PA. STATE BOARD
OF EDUCATION

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?

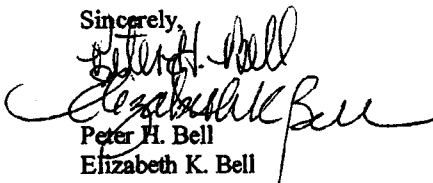
We find the thought of the state allowing open interpretation of IDEA and freedom of decision-making to local educational authorities unacceptable. Just as US Representative Charles Bass and others in Congress are showing their support for IDEA and their responsibility and commitment to special needs 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



Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

September 26, 2000

Ms. Karen Yildirim
11 Curry Lane
Horsham, PA 19044

Dear Ms. Yildirim:

Thank you for your letter dated September 19, 2000 on proposed revisions to regulations Chapter 14 (special education services and programs).

Your letter is considered as official public comment and is being shared with all members of the Board. Pursuant to the provisions of the Regulatory Review Act, copies of your comments are also being provided to the Independent Regulatory Review Commission (IRRC) and the chairmen of the House and Senate Education Committees.

Be assured that your comments will be considered carefully in the development of the final-form of these regulations.

Recent amendments to Regulatory Review Act include a provision that the final-form of regulations be mailed to public commentators at their request. While no longer required to do so, the Board will continue its practice of sending the final-form of the regulations to all public commentators. Therefore, it will not be necessary for you to make a specific request for it.

Sincerely yours,

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

Peter H. Garland
Executive Director

cc: Members of the State Board
Senator Rhoades
Senator Schwartz
Representative Stairs
Representative Colafella
IRRC

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Original: 2144

Juno e-mail printed Tue, 19 Sep 2000 13:54:37 , page 1

From: air215

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

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2000 OCT -2 AM 9:40

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REGULATORY REVIEW COMMISSION SEP 22 2000

PA STATE BOARD OF EDUCATION

Original: 2144



Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

September 26, 2000

Mrs. Joanne R. Taylor
P.O. Box 190
78 Wildfire Lane
Home, PA 15747

Dear Mrs. Taylor:

Thank you for your letter dated September 15, 2000 on proposed revisions to regulations Chapter 14 (special education services and programs).

Your letter is considered as official public comment and is being shared with all members of the Board. Pursuant to the provisions of the Regulatory Review Act, copies of your comments are also being provided to the Independent Regulatory Review Commission (IRRC) and the chairmen of the House and Senate Education Committees.

Be assured that your comments will be considered carefully in the development of the final-form of these regulations.

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Sincerely yours,

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

Peter H. Garland
Executive Director

cc: Members of the State Board
Senator Rhoades
Senator Schwartz
Representative Stairs
Representative Colafella
IRRC

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2000 OCT -2 AM 9:40
INDEPENDENT REGULATORY
REVIEW COMMISSION

Original: 2144

Mrs. Joanne R. Taylor
Dr. John F. Taylor
P.O. Box 190
78 Wildfire Ln.
Home, PA 15747
(724) 397-2040

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2000 OCT -2 AM 9:40

REGULATORY
REVIEW COMMISSION

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SEP 1 8 2000

PA. STATE BOARD
OF EDUCATION

September 15, 2000

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

Dear Dr. Garland:

My husband and I are deeply concerned about the proposed changes in Special Education Regulations. We have two special needs children.

Adam, our 14 year old son, has high functioning autism. Due to the success of the many professionals who have worked with him over the years, he is mainstreamed in 9th grade classes at Marion Center High School. The transition to high school went very smoothly, in part, to the current regulations. The plan for transition was discussed, devised, and implemented at his IEP last spring. Adam has a full time instructional aide with him and his progress is closely monitored by his learning support teacher.

Kaitlin, our 6 year old, has Down Syndrome and is non-verbal. She is repeating Kindergarten this year in hopes she can participate more in the Kindergarten class. She has a full time instructional aide with her and spends most of her time in the Life Skills class. We are worried about class size and age range in the classroom. Without the current regulations, the Life Skills classroom could become unmanageable and the amount of learning decreased. I volunteer my time to help out in the Life Skills classroom and in other areas of the school. I witness daily the success of the Special Needs Programs in our school district and hope that no changes are made that will interfere with our children's learning.

Please keep specific rules; they are easier to enforce. Please re-schedule the hearings until October to give the families involved time to comment.

Thank you for your time.


Joanne R. Taylor

Original: 2144



Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

September 26, 2000

Mr. Ted Sutton
5704 Gordan Drive
Harrisburg, PA 17112

Dear Mr. Sutton:

Thank you for your letter dated September 22, 2000 on proposed revisions to regulations Chapter 14 (special education services and programs).

Your letter is considered as official public comment and is being shared with all members of the Board. Pursuant to the provisions of the Regulatory Review Act, copies of your comments are also being provided to the Independent Regulatory Review Commission (IRRC) and the chairmen of the House and Senate Education Committees.

Be assured that your comments will be considered carefully in the development of the final-form of these regulations.

Recent amendments to Regulatory Review Act include a provision that the final-form of regulations be mailed to public commentators at their request. While no longer required to do so, the Board will continue its practice of sending the final-form of the regulations to all public commentators. Therefore, it will not be necessary for you to make a specific request for it.

Sincerely yours,

A handwritten signature in cursive script that reads "Peter H. Garland".

Peter H. Garland
Executive Director

cc: Members of the State Board
Senator Rhoades
Senator Schwartz
Representative Stairs
Representative Colafella
IRRC

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2000 OCT - 2 AM 9:40
REGULATORY
REVIEW COMMISSION

Original: 2144

Ted Sutton
5704 Gordan Drive
Harrisburg, PA 17112
September 22, 2000

RECEIVED
2000 OCT -2 AM 9:40

REGULATORY
REVIEW COMMISSION

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

Dr. Garland:

I refer you to my written comments of September 11, 2000 (copy attached). Subsequent to my sending my comments on Proposed Chapter 14, I have given addition attention to my thoughtful comments and hereby amend my suggestions of September 11, 2000.

This is to provide comments relative to the proposed changes in Chapter 14, published in the Pennsylvania Bulletin on September 2, 2000. I offer the following.

1. §14.162(d), as proposed - Requires that "The hearing for a child with a disability or thought to be a child with a disability shall be conducted by and held in the school district at a place reasonably convenient to the parents."

Federal regulations require ... "Each hearing and each review involving oral arguments must be conducted at a **time** (emphasis added) and place that is reasonably convenient to the parents **and child involved** (emphasis added)." (34 CFR §300.511(d))

In that the preamble speaks as the intended purpose of the changes are to align with federal regulations, the proposal at §14.162(d) should be changed and would remain consistent with the State Board's intent.

SUGGESTED REVISION OF §14.162(d)

The hearing for a child with a disability or thought to be a child with a disability shall be conducted by and held in the school district at a time and place reasonably convenient to the parents and child involved.

9/22/00 - AMENDED SUGGESTED REVISION OF §14.162(d) (2nd sentence)

A hearing for an eligible young child or thought to be eligible young child shall be conducted by the early intervention agency at a time and place reasonably convenient to the parents and child involved.

2. §14.162(e) as proposed - Requires that "The hearing shall be an oral, personal hearing and shall be open to the public unless the parents request a **closed hearing** (emphasis added)."

The Federal regulations require ... "Parents involved in hearings must be given the right to...(ii) **Open the hearing** (emphasis added) to the public." (34 CFR §300.508(c)(ii)) **NOTE: The correct citation is 34 CFR §300.509(c)(ii) (9/22/00)**

Discussion: Under the PA proposed language, all hearings are to be open to the public unless the parents request that they be "closed". This conflicts with the federal regulations that require thatall hearings be "closed" to the public unless the parents asks that the hearing be "open". Therefore, the language needs to be edited which will not change the intended policy of the State Board.

SUGGESTED REVISION OF §14.162(e)

14.162(e) ...The hearing shall be an oral, personal hearing and shall be closed [open] to the public unless the parents request an open [closed] hearing.

9/22/00 - AMENDED SUGGESTED REVISION OF §14.162(d)

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ted Sutton", written in black ink.

Ted Sutton



Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

September 26, 2000

Ms. Janet Stotland
Co-Director
Education Law Center
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107-4717

Dear Ms. Stotland:

Thank you for your letter dated September 18, 2000 on proposed revisions to regulations Chapter 14 (special education services and programs).

Your letter is considered as official public comment and is being shared with all members of the Board. Pursuant to the provisions of the Regulatory Review Act, copies of your comments are also being provided to the Independent Regulatory Review Commission (IRRC) and the chairmen of the House and Senate Education Committees.

Be assured that your comments will be considered carefully in the development of the final-form of these regulations.

Recent amendments to Regulatory Review Act include a provision that the final-form of regulations be mailed to public commentators at their request. While no longer required to do so, the Board will continue its practice of sending the final-form of the regulations to all public commentators. Therefore, it will not be necessary for you to make a specific request for it.

Sincerely yours,

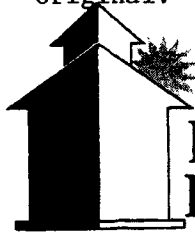
A handwritten signature in cursive script, appearing to read "Peter H. Garland".

Peter H. Garland
Executive Director

cc: Members of the State Board
Senator Rhoades
Senator Schwartz
Representative Stairs
Representative Colafella
IRRC

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INDEPENDENT REGULATORY REVIEW COMMISSION

Original: 2144



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Pennsylvania's Public Schools

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September 18, 2000

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CO-DIRECTORS
Janet F. Stotland
Len Rieser

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

RE: Comments on Proposed 22 Pa. Code Chapter 14

Dear Dr. Garland:

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

Overview

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

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

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

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Analysis of Specific Proposed Regulations

§14.101 (definitions):

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

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

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

The following sections are incorporated by reference as if fully set forth herein:

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

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

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

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

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

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

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

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

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

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

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

should be retained.

§14.162(Procedural Safeguards):

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

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

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

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

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

Other Important Protections not in this Proposal

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

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

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

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

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

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

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

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

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

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

Very truly yours,


Janet F. Stotland
Co-Director

Enclosures

cc: Interagency Regulatory Review Commission

Original: 2144



Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

September 26, 2000

Marion and Robert Redinski
371 Greenpond Road
Shavertown, PA 18708-9638

Dear Marion and Robert Redinski:

Thank you for your letter dated September 21, 2000 on proposed revisions to regulations Chapter 14 (special education services and programs).

Your letter is considered as official public comment and is being shared with all members of the Board. Pursuant to the provisions of the Regulatory Review Act, copies of your comments are also being provided to the Independent Regulatory Review Commission (IRRC) and the chairmen of the House and Senate Education Committees.

Be assured that your comments will be considered carefully in the development of the final-form of these regulations.

Recent amendments to Regulatory Review Act include a provision that the final-form of regulations be mailed to public commentators at their request. While no longer required to do so, the Board will continue its practice of sending the final-form of the regulations to all public commentators. Therefore, it will not be necessary for you to make a specific request for it.

Sincerely yours,

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

Peter H. Garland
Executive Director

cc: Members of the State Board
Senator Rhoades
Senator Schwartz
Representative Stairs
Representative Colafella
IRRC

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REVIEW COMMISSION

Original: 2144

Sept.21,2000

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

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2000 OCT -2 AM 9:41

REGULATORY
REVIEW COMMISSION

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SEP 26 2000
PA. STATE BOARD
OF EDUCATION

Dear Dr. Garland,

We have a Son with Down Syndrome, who is doing extremely well in our District's Public School system. He attends Dallas Middle School, Dallas,PA. He is truly a great example of Inclusionary Practice in the Public School System's success. Recently my husband and I have examined the proposed changes to Chapter 14 Regulations and the proposed deletion of Chapter 342, all of which covers special education in the state of PA. We must continue to go FORWARD with Inclusionary Practices because it does work and works extremely well in our Son's case.He does extremely well with academia and socialization in the Public School System. His schoolmates love having him in their classes and he loves being with them and learns very well along with them.

We know thru present research that children learn better in smaller classes with children near to their own level. In Bob's case- Bob is consistently encouraged to do his very best by his peers,teachers, and parents, and we may say, he is doing so. Bob has never been in a segregated school , he would not perform to his capabilities. With these new proposals,this will do just the opposite. We must continue to move FORWARD not BACKWARD! These proposals are very alarming. By just referring to the IDEA law, it makes it very difficult not for only the average individual to understand, but also for school administrators to understand their rights as interpreted by this law. Chapter 342 helps all to interpret the law.

We feel the State of PA. is a great leader in special education and provides education for our son. It must not change!Please! Chapter 14 and Chapter 342 should not change or be deleted because they provide some of the best language in the special education legislation in the United States! We urge the State Board of Education to keep the old regulations and only change when it is necessary to comply with Fed. law changes. Please help our disabled son continue to get a quality education in PA.

Sincerely,

Marion & Robert Redinski

Marion and Robert Redinski

371 Greenpond Road

Stranertown, Pa 18708-9638

Original: 2144



Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

September 26, 2000

Ms. Ruth Ann Quigley
119 Lynnwood Avenue
Glenside, PA 19038

Dear Ms. Quigley:

Thank you for your letter dated September 18, 2000 on proposed revisions to regulations Chapter 14 (special education services and programs).

Your letter is considered as official public comment and is being shared with all members of the Board. Pursuant to the provisions of the Regulatory Review Act, copies of your comments are also being provided to the Independent Regulatory Review Commission (IRRC) and the chairmen of the House and Senate Education Committees.

Be assured that your comments will be considered carefully in the development of the final-form of these regulations.

Recent amendments to Regulatory Review Act include a provision that the final-form of regulations be mailed to public commentators at their request. While no longer required to do so, the Board will continue its practice of sending the final-form of the regulations to all public commentators. Therefore, it will not be necessary for you to make a specific request for it.

Sincerely yours,

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

Peter H. Garland
Executive Director

cc: Members of the State Board
Senator Rhoades
Senator Schwartz
Representative Stairs
Representative Colafella
IRRC

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2000 OCT -2 AM 9:39
REGULATORY
REVIEW COMMISSION

Original: 2144

**RUTHANN QUIGLEY
119 LYNNWOOD AVENUE
GLENSIDE, PA 19038**

RECEIVED

SEP 25 2000

**PA. STATE BOARD
OF EDUCATION**

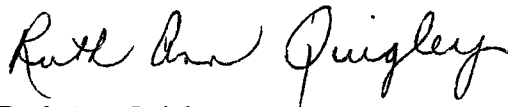
September 18, 2000

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 basically 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

RECEIVED
2000 OCT -2 AM 9:41
THE ATTORNEY
REVIEW COMMISSION

Original: 2144



Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

September 26, 2000

Dr. Arlene Otis
Berks Administrators of Special Education
1111 Commons Blvd, Box 16050
Reading, PA 19612-6050

Dear Dr. Otis:

Thank you for your letter dated September 21, 2000 on proposed revisions to regulations Chapter 14 (special education services and programs).

Your letter is considered as official public comment and is being shared with all members of the Board. Pursuant to the provisions of the Regulatory Review Act, copies of your comments are also being provided to the Independent Regulatory Review Commission (IRRC) and the chairmen of the House and Senate Education Committees.

Be assured that your comments will be considered carefully in the development of the final-form of these regulations.

Recent amendments to Regulatory Review Act include a provision that the final-form of regulations be mailed to public commentators at their request. While no longer required to do so, the Board will continue its practice of sending the final-form of the regulations to all public commentators. Therefore, it will not be necessary for you to make a specific request for it.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Peter H. Garland".

Peter H. Garland
Executive Director

cc: Members of the State Board
Senator Rhoades
Senator Schwartz
Representative Stairs
Representative Colafella
IRRC

RECEIVED
2000 OCT -2 AM 9:39
INDEPENDENT REGULATORY
REVIEW COMMISSION

B - A - S - E RECEIVED

Berks Administrators of Special Education

2000 OCT 2 10 09:41
INDEPENDENT ADMINISTRATIVE
REVIEW COMMISSION

RECEIVED

SEP 25 2000

PA. STATE BOARD
OF EDUCATION

September 21, 2000

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

Dear Dr. Garland:

The members of Berks County Administrators of Special Education (BASE) commend your committee's efforts on behalf of the State's special education population. As professionals, we appreciate the opportunity to provide commentary regarding the proposed revisions to Chapter 14. We believe that the State's efforts to realign IDEA with Chapter 14 will diminish inconsistencies and eliminate confusion for all parties affected by this law.

While there are many issues contained in the proposed changes, several merit our specific comment. They include the following:

- Reevaluations – BASE supports the change from two to three year reevaluations. Students have the inherent right to program reevaluation through the IEP process on a yearly basis. The three-year reevaluation process will not preclude changes to any child's program. Additionally, we support optional involvement of the school psychologist in reevaluations because it will encourage schools to use a more curriculum based approach to the reevaluation process.
- Timelines – We support the elimination of the intermediate timelines for the completion of the evaluation process. This eliminates confusion for the parents and school districts thus making the process more user friendly.
- Caseloads – BASE is in agreement with the deletion of the parentheticals. Local maximums, set by school districts, should be encouraged in order to maintain the integrity of special education programs.
- Sunset Date – The four year review of Chapter 14 as proposed will provide adequate time to evaluate the effects of the implementation of the procedures.
- Publication - We would like the Bureau of Special Education to consider publishing the final document with IDEA regulations side-by-side.

Again, we appreciate the opportunity to provide feedback during this critical and final process. The Special Education community applauds your effort to bring this process to a conclusion and looks forward to a final document.

Sincerely,

Arlene G. Otis, Ed.D. on behalf of
Berks Administrators of Special Education (BASE)



Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

September 26, 2000

Vicki and Michael Krisher
62 Grange Road
Bernville, PA 19506

Dear Vicki and Michael Krisher:

Thank you for your letter dated September 20, 2000 on proposed revisions to regulations Chapter 14 (special education services and programs).

Your letter is considered as official public comment and is being shared with all members of the Board. Pursuant to the provisions of the Regulatory Review Act, copies of your comments are also being provided to the Independent Regulatory Review Commission (IRRC) and the chairmen of the House and Senate Education Committees.

Be assured that your comments will be considered carefully in the development of the final-form of these regulations.

Recent amendments to Regulatory Review Act include a provision that the final-form of regulations be mailed to public commentators at their request. While no longer required to do so, the Board will continue its practice of sending the final-form of the regulations to all public commentators. Therefore, it will not be necessary for you to make a specific request for it.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Peter H. Garland".

Peter H. Garland
Executive Director

cc: Members of the State Board
Senator Rhoades
Senator Schwartz
Representative Stairs
Representative Colafella
IRRC

RECEIVED
2000 OCT - 2 AM 9:39
INDEPENDENT REGULATORY
REVIEW COMMISSION

Original: 2144

September 20, 2000

RECEIVED
2000 OCT -2 AM 9:14

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



*IAN KRISHER and
his sister, Rebecca*

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 set number of days to help enforce that our child gets help "as soon as possible". Leaving the wording

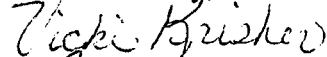
so general is only asking for trouble in the future. The sooner a child gets help, the better the outcome in many cases. Studies have upheld that philosophy.

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

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



**Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION**

September 26, 2000

Edward and Leonardia Karpowicz
132 Pine Street
Nanticoke, PA 18634

Dear Edward and Leonardia Karpowicz:

Thank you for your letter dated August 23, 2000 on proposed revisions to regulations Chapter 14 (special education services and programs).

Your letter is considered as official public comment and is being shared with all members of the Board. Pursuant to the provisions of the Regulatory Review Act, copies of your comments are also being provided to the Independent Regulatory Review Commission (IRRC) and the chairmen of the House and Senate Education Committees.

Be assured that your comments will be considered carefully in the development of the final-form of these regulations.

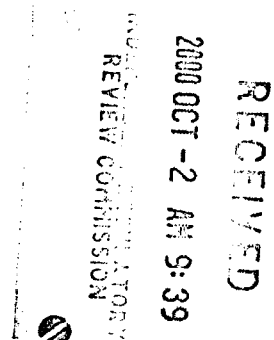
Recent amendments to Regulatory Review Act include a provision that the final-form of regulations be mailed to public commentators at their request. While no longer required to do so, the Board will continue its practice of sending the final-form of the regulations to all public commentators. Therefore, it will not be necessary for you to make a specific request for it.

Sincerely yours,

A handwritten signature in cursive script that reads "Peter H. Garland".

Peter H. Garland
Executive Director

cc: Members of the State Board
Senator Rhoades
Senator Schwartz
Representative Stairs
Representative Colafella
IRRC



Original 2144

August 23, 2000

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

Dear Mr. Hickok,

My wife and I have examined the latest draft of the proposed changes to Chapter 14 Regulations and the proposed deletion of Chapter 342, all of which cover special education in Pennsylvania. The most alarming thing is that the State Board of Education is still trying to eliminate restrictions on class size and the mixture of disabilities based on severity. This has been done in other states such as New York with disasterous effects. While science is proving that all children learn better in smaller classes with children near to their own level, you are preposing to do just the opposite.

As parents of an autistic son who is doing very well in his present enviroment, we are extremely alarmed by the Board's proposals. As for the deletion of Chapter 342 and only referring to IDEA for reference, it is going to make it hard for the average individual and school administrators to understand their rights and to interpert the law.

The State of Pennsylvania has always been a leader in special education, Chapter 14, and Chapter 342 which emcompass some of the best special education legislation in the United States, even surpassing the Federal IDEA Act in some areas. We urge the State Board to keep the old regulations and only change were it necessary to comply with federal law changes. Please do this and keep Pennsylvania Number 1 in giving disabled children a quality education.

Sincerely,

Edward B. Karpowicz
Leonardia Karpowicz
Edward and Leonardia Karpowicz

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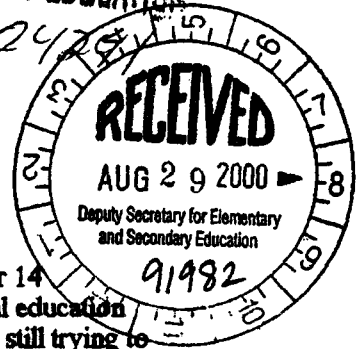
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REGULATORY
REVIEW COMMISSION

RECEIVED

AUG 29 2000

SECRETARY OF EDUCATION





RECEIVED
2000 OCT -2 AM 9:40

Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

September 26, 2000

Anna & Michael Filmyer
325 Tyson Avenue
Glenside, PA 19038

Dear Anna & Michael Filmyer:

Thank you for your letter dated September 18, 2000 on proposed revisions to regulations Chapter 14 (special education services and programs).

Your letter is considered as official public comment and is being shared with all members of the Board. Pursuant to the provisions of the Regulatory Review Act, copies of your comments are also being provided to the Independent Regulatory Review Commission (IRRC) and the chairmen of the House and Senate Education Committees.

Be assured that your comments will be considered carefully in the development of the final-form of these regulations.

Recent amendments to Regulatory Review Act include a provision that the final-form of regulations be mailed to public commentators at their request. While no longer required to do so, the Board will continue its practice of sending the final-form of the regulations to all public commentators. Therefore, it will not be necessary for you to make a specific request for it.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Peter H. Garland".

Peter H. Garland
Executive Director

cc: Members of the State Board
Senator Rhoades
Senator Schwartz
Representative Stairs
Representative Colafella
IRRC

Original: 2144

ANNA & MICHAEL FILMYER
325 TYSON AVENUE
GLENSIDE, PA 19038

RECEIVED

2000 OCT -2 AM 9:40

September 18, 2000

REGULATORY
REVIEW COMMISSION

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

PA STATE BOARD OF
EDUCATION

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.

September 19, 2000

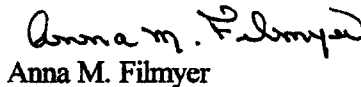
The recurring theme in the above items, concern the tendency to give the local education agency power to "do anything they would like" under the guise of interpreting the federal laws. These regulations basically strip the power of individuals to fight for their rights, and allow school districts to 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



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

RECEIVED

2000 SEP 27 AM 8:38

INDEPENDENT LEGISLATIVE
REVIEW COMMISSION

22 Oxford Court
Tareyton Estates
Langhorne, Pa. 19047
September 24, 2000

Eugene Hickok
Secretary of Education
Pennsylvania Dept. of Education
333 Market Street
Harrisburg, Pa. 17101

Dear Mr. Hickok:

I am writing to you as a parent of a 12 year old son, David who has Pervasive Developmental Disorder (PDD-NOS), which is within the Autism Spectrum Disorder. David has benefited from Early Intervention Placements from ages 3 to 5. Since that time, he has been placed with the Bucks County Intermediate No. 22 in Autistic/PDD Support classes. I have been immensely appreciative and proud about Bucks County Intermediate Unit's programs for children with Autism Spectrum Disorder.

The proposed Chapter 14 Special Education Regulations give parents, and advocates significant concerns. These proposed regulations may aim to be in compliance with the Federal IDEA 1997 Regulations, but do not. The language in the proposed Chapter 14 Regulations is quite nebulous and nonspecific, thus leaving too much room and opportunity for a too wide range of interpretations and implementations of Special Education Programs and IEPs by individual school districts and Intermediate Units. The content of the proposed regulations are not "user friendly" for parents thus creating negativity in the relationship between Educational administrators/personnel and parents and advocates for children with disabilities.

The Pennsylvania Department of Education has not given sufficient time for parents, and advocates to be an integral part of the development of the proposed regulations, public hearings and comments. I am requesting your department to reschedule for additional public hearings and comments regarding the proposed Chapter 14 Special

Education Regulations.

More importantly, it is tragic that the Pennsylvania Department of Education is aiming to change/modify or not continue its current Special Education Regulations, which have superseded the Federal IDEA 1997 Regulations. Pennsylvania Department of Education needs to reestablish itself as a leader in Special Education Regulations and Programs for other states to look up to and follow suit.

Quality Special Educutions Regulations and Programs are the best investment that we as state administrators and tax payers can make for children with disabilities. If quality special education and legal safeguards are not provided, Pennsylvania will be paying for more funding for our children when they become adults. This increased funding will be obvious spent in supportive services and placements (and some inappropriate placements such as the correctional facilities) when our children become adults.

Please pay attention to the fact that children with Autism Spectrum Disorders are being increasingly diagnosed in Pennsylvania, and throughout the USA.

One can debate endlessly the reasons for this increase, but the fact of the matter is that the children with Autism are already here in Pennsylvania. As moral and just state administrators in the Pennsylvania Department of Education, our children deserve the best special education. If you have a child, grandchild, nephew/niece and child age friend with Autism Spectrum Disorder, you would be also be advocating for this as well.

Yes, I can go through point by point in the Proposed Chapter 14 Special Education Regulations, but the fact of the matter, is parents and advocates need the time and opportunity to work with the Pennsylvania Department of Education in a non-adversary manner.

Is it not an unfortunate suspicion on my part, that the Department of Education is aiming to decrease Special Education Funding and spending at the expense of our children?

Your consideration of what I stated here and what other parents have put before you in the current public hearings is necessary and appreciated.

All children with or without disabilities deserve a quality education that prepare them to be functional adults who can contribute to their community as employed, law abiding and moral citizens. It begins with being adults being moral and just for the care and education of all children.

Sincerely yours,

Ambry Ward

Ambry Ward

David's Mother

ambryw@aol.com

Cc:

Governor Tom Ridge

Peter Garland, State Board of Education

Independent Regulatory Review Commission



Association for Retarded Citizens - Butler County

Association Office: 100 N Washington St • Butler PA 16001-5296 • 724/282-1500

September 22, 2000

Return Receipt Requested

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

RECEIVED
2000 SEP 28 AM 9:11
REVIEW COMMISSION

Dear Dr. Garland:

I am writing on behalf of the ARC-Butler County Board of Directors relevant to proposed revisions to 22 PA Code, Chapter 14 regulations for special education services and programs. The ARC-Butler County Board of Directors is extremely concerned with the following aspects of the proposed revisions:

- The decision to simply include federal regulations (IDEA) by reference to the Code of Federal Regulations (CFR) is unconscionable; parent(s) and family members cannot easily access the CFR for reference. Even if the CFR were available to all, this cross-referencing only makes the entire process more difficult for parent(s) and families.
- The proposal should be revised to again require that districts provide agreed upon services within 10 school days of the completion of a student's IEP.
- The regulations should continue the current practice of setting statewide standards of teacher caseloads for special education classes and the age range of the students in special education classes.
- The regulations should continue to require that behavior plans be part of the IEPs of all children with behavioral problems that interfere with their learning.
- The regulations should continue to require a range of program options that must be available, starting with supporting children with special needs in regular classes, whenever possible.
- These revisions to the special education regulations are vitally important to parent(s) and families; and the time period for comment should be extended.

The ARC-Butler County Board of Directors requests that you consider changing the proposed regulations to address the above-listed issues.

Sincerely,

Robert W. Arnhold, Chair
Advocacy/Governmental Affairs Committee

- c: Independent Regulatory Review Commission
Eugene Hickok, Secretary of Education
Local legislators
Board of Directors

The Association is supported by your United Way and is a member of The Arc and The Arc-PA.
Its Programs are funded by Butler County MH/MR and the Commonwealth.



Residential Program

222 W Cunningham St 283-7441

Career Opportunities for the Disabled

340 S Main St Suite A 282-1775

Vocational Program

100 N Washington St 283-3300

The official registration and financial information of Association for Retarded Citizens-Butler County may be obtained from the Pennsylvania Department of State by calling toll free, within Pennsylvania, 1-800-732-0999. Registration does not imply indorsement.

Original: 2144

Sept.21,2000

Independent Regulatory Review Commission
14 Floor
333 Market Str..
Harrisburg, PA. 17101

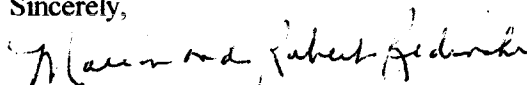
To Whom It May Concern,

We have a Son with Down Syndrome, who is doing extremely well in our District's Public School system. He attends Dallas Middle School, Dallas,PA. He is truly a great example of Inclusionary Practice in the Public School System's success. Recently my husband and I have examined the proposed changes to Chapter 14 Regulations and the proposed deletion of Chapter 342, all of which covers special education in the state of PA. We must continue to go FORWARD with Inclusionary Practices because it does work and works extremely well in our Son's case.He does extremely well with academia and socialization in the Public School System. His schoolmates love having him in their classes and he loves being with them and learns very well along with them.

We know thru present research that children learn better in smaller classes with children near to their own level. In Bob's case- Bob is consistently encouraged to do his very best by his peers,teachers, and parents, and we may say, he is doing so. Bob has never been in a segregated school , he would not perform to his capabilities. With these new proposals,this will do just the opposite. We must continue to move FORWARD not BACKWARD! These proposals are very alarming. By just referring to the IDEA law, it makes it very difficult not for only the average individual to understand, but also for school administrators to understand their rights as interpreted by this law. Chapter 342 helps all to interpret the law.

We feel the State of PA. is a great leader in special education and provides education for our son. It must not change!Please! Chapter 14 and Chapter 342 should not change or be deleted because they provide some of the best language in the special education legislation in the United States! We urge the State Board of Education to keep the old regulations and only change when it is necessary to comply with Fed. law changes. Please help our disabled son continue to get a quality education in PA.

Sincerely,



Marion and Robert Redinski

INDEPENDENT REGULATORY
REVIEW COMMISSION

2000 SEP 27 AM 8:40

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RECEIVED

2000 SEP 22 AM 8:44

REGULATORY
REVIEW COMMISSION

BOARD OF TRUSTEES
Suzanne Sheehan Becker
Pamela Cook
Jefferson C. Crosby, Esq.
Happy Craven Fernandez
David Allen Frisby
Janet Lonsdale
Vivian Narehood, Esq.
David Richman, Esq.
Anita Santos, Esq.
Rochelle Nichols Solomon
Suzanne E. Turner, Esq.
Sol B. Vazquez-Otero, Esq.
Robert P. Vogel, Esq.

CO-DIRECTORS
Janet F. Stotland
Len Rieser

Original: 2122

Testimony of the Education Law Center
RE: Revisions to 22 Pa. Code Chapters 14 and 342

September 21, 2000

My name is Janet Stotland, and I am Co-Director of the Education Law Center of PA.

I appreciate this opportunity to testify regarding the proposed changes to PA's special education and pre-school early intervention regulations.

Initially, I'd like to urge the State Board to create more opportunities for public comment. The regulations were not published until early September, which left very little time for families to hear about the proposal, understand what is at stake and sign up for the public hearings. Given the importance of the proposed changes, there should be more hearings scheduled, outside of major urban areas. Families should also have more than 30 days to submit written comments.

The need to make the regulatory process open and accessible to families and advocates was raised recently in the context of proposed Infants and Toddlers regulations. I am pleased to report that the Department of Public Welfare immediately responded to this request, providing an additional 90 days to submit written comments, and scheduling two additional public hearings (for a total of 5). We urge the State Board and the Department to respond similarly.

Education Law Center-PA
The Philadelphia Building
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107-4717
Phone: 215-238-6970
Fax: 215-625-9589
TTY: 215-238-5892
E-mail: elc@elc-pa.org

Education Law Center-PA
1901 Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219
Phone & TTY: 412-391-5225
Fax: 412-391-4496
E-mail: elc@elc-pa.org

PA School Reform Network
317 North Front Street, 1st Floor
Harrisburg, PA 17101
Phone: 717-238-7171
Fax: 717-238-7552
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E-mail: psrn@elc-pa.org

I'd next like to address the question, "what's wrong with the proposed regulations?" I attach to this testimony the written comments that I have already sent to the State Board. They provide a detailed, section-by-section, analysis of the proposal. However, for the purpose of today's testimony, I'd like to make four major points.

Point #1: Under this proposal, families and school districts won't be able to tell what the rules are.

Instead of setting out at length what the rules are in each area, for the most part the proposal just refers to the federal regulations. Look at proposed Sections 14.102 and .103:

The following sections are incorporated by reference as if fully set forth herein:

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

There is no way this helps anyone, districts or families, understand what is required. We continue to urge the State Board to promulgate a coherent and complete set of regulations to guide districts and parents in implementing this important program. Since the mid-1970's when this program first began, PA has such a guide in its state special education regulations. It is a mistake for the State Board to take a different course.

Point #2: Since the rules are less specific, they will be more difficult for families to enforce. And more is left to the discretion of local districts.

Current law requires that districts provide agreed upon services no more than 10 school days after a child's IEP is completed; under the new proposal, the deadline is, "as soon as possible." Instead of the current statewide standards, each district will be able to set its own policy on teacher caseloads for special education classes, and the age range of the students in those classes. The proposal eliminates the current requirement that behavior plans be part of the IEPs of all children with behavioral problems that interfere with their learning.

How does this make the regulations less enforceable? For example, under the current regulations, if a service on a child's IEP isn't provided within 10 school days, the family can file a complaint with the state, which will order the district to provide the service and award compensatory services to the student for the delay. Under the proposed regulations, if the child has been waiting 60 days for his physical therapy to begin, and the family files a complaint, the state enforcement agency will have no basis on which to act. If the family requests a hearing, it is unclear to me what criteria the Hearing Officer could use to determine if the service is being provided, "as soon as possible." And I assume that, "as soon as possible" will differ from district to district. The implications and variations are obvious.

Point #3: In important areas there are no federal or state rules. The federal rules are often very general, with the expectation that states will explain how things will work locally. These regulations leave important gaps in such areas as how "smooth" transitions will be insured when children who need early intervention services turn 3 and 5 and the responsible education agency changes; how families can get the state to fix legal violations (that is, how the

state's "complaint management system" works); and how PA will insure that there are "surrogate parents" to act for children in foster care with no birth family to act on their behalf.

Point #4: There are important rules that are needed, and that are not included.

The proposal doesn't fix certain problems that families are now encountering. For example, it should make clear that, subject to reasonable rules to prevent disruptions, parents can visit schools and classrooms. It should provide help in implementing important new federal requirements, such as how students with disabilities will be included, with accommodations, in statewide testing, and how districts can assure that special education programs, whenever possible, are geared to the "general curriculum."

The final regulations will be the infrastructure for the special education and pre-school early intervention programs for many years to come. We can and must do better than this.



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September 18, 2000

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

CO-DIRECTORS
Janet F. Stotland
Len Rieser

RE: Comments on Proposed 22 Pa. Code Chapter 14

Dear Dr. Garland:

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

Overview

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

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

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

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Analysis of Specific Proposed Regulations

§14.101 (definitions):

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

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

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

The following sections are incorporated by reference as if fully set forth herein:

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

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

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

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

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

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

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

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

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

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

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

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

§14.141 (Educational placement):

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

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

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

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

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

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

Early Intervention (EI for 3-5 year olds)

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

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

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

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

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

should be retained.

§14.162(Procedural Safeguards):

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

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

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

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

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

Other Important Protections not in this Proposal

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

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

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

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

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

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

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

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

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

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

Very truly yours,

A handwritten signature in black ink, appearing to read 'Janet F. Stotland', written over the printed name below.

**Janet F. Stotland
Co-Director**

Enclosures

cc: Interagency Regulatory Review Commission