

Regulatory Analysis Form

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REVIEW COMMISSION

(1) Agency

State Board of Education

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

006-270

IRRC Number: 2144

(3) Short Title

Special Education Services and Programs

(4) PA Code Cite

22 Pa. Code Chapter 14 and
22 Pa. Code Chapter 342

(5) Agency Contacts & Telephone Numbers

Primary Contact: Peter H. Garland
787-3787

Secondary Contact:

(6) Type of Rulemaking (check one)

Proposed Rulemaking
Final Order Adopting Regulation X
Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

No
Yes: By the Attorney General
Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

These regulations establish procedures for the identification of students who are disabled and in need of special education services and programs and set forth requirements and procedures for the delivery of those services and programs. This final-form regulatory package revises 22 Pa. Code, Chapter 14 and deletes Chapter 342.

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

Public School Code of 1949 (24 P.S. 1-101--26-2606-B).
Individuals with Disabilities Education Act (IDEA), as amended June 4, 1997
34 CFR Part 300 (relating to assistance to states for the education of children with disabilities) as published in the *Federal Register*, March 12, 1999, Vol. 64, No. 48.
PARC v. Commonwealth Consent Decree

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

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

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

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

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

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

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

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

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

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

No persons will be adversely affected by this regulation.

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

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

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

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

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

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

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

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

N/A

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

N/A

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

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

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

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

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Regulatory Analysis Form

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

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

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

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

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

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

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

N/A



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

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

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

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

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

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

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

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

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

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

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

N/A

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

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

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

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

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

2144

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

BY: _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections
attached.

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

State Board of Education

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 006-270

DATE OF ADOPTION: 1/18/01

BY: Patrick Garland
Executive Director

TITLE: _____
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as
to form and legality. Executive or Inde-
pendent Agencies.

BY: Mary E Dunlop

2/1/01

DATE OF APPROVAL

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

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

Final-Form

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

PREAMBLE

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

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

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

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

Response to Comments

Adoption by Reference

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

determined that doing so would lead to unnecessarily lengthy regulations and lead to possible discrepancies between Federal intent and State intent. As a result, these regulations have been drafted to incorporate federal rules by reference, adding in those areas where the Federal rules require greater detail, where Pennsylvania statute or court decision requires specific language and where Pennsylvania practices are different from those found in other jurisdictions. Federal rules are adopted by reference in many Pennsylvania regulations. The Department of Education has and will continue to develop publications and other media to inform parents, teachers and administrators of their rights and responsibilities under both Federal and State statutes and regulations in regard to children with disabilities.

Definitions—14.101

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

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

Child find—14.152

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

Screening—14.122

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

Evaluation—14.123

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

School Psychologists—Commentators, the House Education Committee and the IRRC asked the Board to restore the requirement for school psychologists to be members

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

Implementation of the IEP—14.131

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

Educational Placement—14.141 and 14.142

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

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

Public comments were received that supported the elimination of class size restrictions currently found in Chapter 342. These individuals and organizations supported the flexibility permitted districts to structure and staff the programs and services as required in student IEPs. Other public commentators and the House Education asked the Board to restore class size restrictions to limit possibilities for overcrowding special education classes. The Board maintains its choice to eliminate class size restrictions in the final –form regulation for four reasons: (1) there is no federal requirement to establish class sizes; (2) staffing of classes for students with disabilities must be constructed by schools from the requirements established in student IEPs and cannot be determined effectively as a uniform statewide standard; (3) caseloads provide general protections to prevent overcrowding; and (4) procedural safeguards ensure that

class size cannot serve as an impediment to any student achieving his or her goals as established in the IEP.

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

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

Disciplinary Exclusion—14.143

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

Scope of Appellate Panel Review—14.162

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

Representation in Due Process Hearings

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

Additional Editorial Changes in Clarifications

A number of editorial changes in the final-form regulation have been made to clarify the regulation.

Affected Parties

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

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

Cost and Paperwork Estimates

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

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

Effective Date

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

Sunset Date

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

Regulatory Review

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

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

Under section 5.1(d) of the Regulatory Review Act (71 P.S. §745.5a(d)), the final-form regulations were (deemed) approved by the Senate Education Committee on _____ and (deemed) approved by the House Education Committee on _____. IRRC met on _____ and approved the final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act.

Contact Person

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

The contact person for the implementation of these final-form regulations is Francis Warkomski, Director, Bureau of Special Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 783-2311 or TDD (717) 787-7367.

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

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

Findings

The Board finds that:

- (1) Public notice of the intention to adopt these regulations was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

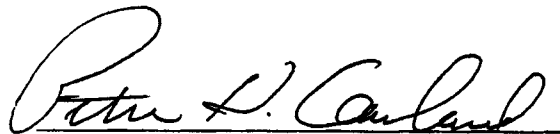
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) The regulations are necessary and appropriate for the administration of the School Code.

Order

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

- (a) The regulations at 22 Pa. Code, Chapter 14 are amended by deleting §§ 14.1-14.8, 14.21-14.25, 14.31-14.39, 14.41-14.45, 14.51-14.56, 14.61-14.68, and 14.71-14.74; and by adding §§ 14.101-14.104, 14.121-14.124, 14.131-14.133, 14.141-14.144, 14.151-14.158, 14.161-14.162 to read as set forth at Annex A. The text at 22 Pa. Code, Chapter 342, §§ 342.1-342.8, 342.21-342.25, 342.31-342.39, 342.41-342.46, 342.51-342.56, 342.61-342.68 and 342.71-342.74 is deleted.
- (b) The Executive Director will submit this order and Annex A to the Office of General Counsel and the Office of the Attorney General for review and approval as to legality and form as required by law.
- (c) The Executive Director of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) This order is effective upon final publication in the *Pennsylvania Bulletin*.

By the State Board of Education:

A handwritten signature in cursive script, reading "Peter H. Garland", written over a horizontal line.

Peter H. Garland

Executive Director

ANNEX A

TITLE 22. EDUCATION

CHAPTER 14: SPECIAL EDUCATION SERVICES AND PROGRAMS

Section 14.1 – 14.8. (Reserved).

Section 14.21-14.25. (Reserved).

Section 14.31-14.39. (Reserved).

Section 14.41-14.45. (Reserved).

Section 14.51-14.56. (Reserved).

Section 14.61-14.68. (Reserved).

Section 14.71-14.74. (Reserved).

GENERAL PROVISIONS

14.101 Definitions.

14.102 Purposes.

14.103 Terminology related to Federal regulations.

14.104 Educational plans.

CHILD FIND, SCREENING AND EVALUATION

14.121 Child find.

14.122 Screening.

14.123 Evaluation.

14.124 Reevaluation.

IEP

14.131 IEP.

14.132 ESY.

14.133 Behavior support.

EDUCATIONAL PLACEMENT

14.141 TERMINOLOGY RELATED TO Educational placement.

14.142 Caseload for special education.

14.143 Disciplinary placements.

14.144 Facilities

EARLY INTERVENTION

14.151 Purpose.

14.152 Public awareness.

14.153 Evaluation.

14.154 IEP.

14.155 Range of services.

14.156 System of quality assurance.

14.157 Exit criteria.

14.158 Data collection and confidentiality.

PROCEDURAL SAFEGUARDS

14.161 Prehearing conferences.

14.162 Impartial due process hearings and expedited due process hearings.

GENERAL PROVISIONS

§14.101 Definitions.

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

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

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

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

Department - The Department of Education of the Commonwealth.

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

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

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

ESY – Extended school year.

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

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

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

IEP - Individualized education program.

IST - Instructional support team.

MDT - Multidisciplinary team.

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

Secretary - The Secretary of the Department.

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

§14.102 PurposeS.

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

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

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

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

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

(i) 34 CFR 300.4-300.6.

(ii) 34 CFR 300.7(a) and (c).

(iii) 34 CFR 300.8-300.24.

(iv) 34 CFR 300.26.

(v) 34 CFR 300.28 and 300.29.

(vi) 34 CFR 300.121-300.125.

(vii) 34 CFR 300.138 and 300.139.

(viii) 34 CFR 300.300.

(ix) 34 CFR 300.302-300.309.

(x) 34 CFR 300.311(b)(c).

(xi) 34 CFR 300.313.

(xii) 34 CFR 300.320 and 300.321.

(xiii) 34 CFR 300.340

(xiv) 34 CFR 300.342-300.346.

(xv) 34 CFR 300.347 (a), (b) and (d).

(xvi) 34 CFR 300.348-300.350.

(XVII) 34 CFR 300.401.

(~~xvii~~) (XVIII) 34 CFR 300.403.

(~~xviii~~) (XIX) 34 CFR 300.450-300.462.

(~~xix~~) (XX) 34 CFR 300.500-300.515.

(~~xx~~) (XXI) 34 CFR 300.519-300.529.

(~~xxi~~) (XXII) 34 CFR 300.531-300.536.

(~~xxii~~) (XXIII) 34 CFR 300.540-300.543.

(~~xxiii~~) (XIV) 34 CFR 300.550-300.553.

(~~xxiv~~) (XXV) 34 CFR 300.560-300.574(a) and (b).

(~~xxv~~) (XXVI) 34 CFR 300.576

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

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

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

§14.103 Terminology related to Federal regulations.

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

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

§14.104 Educational plans.

- (a) Each school district shall develop a special education plan ALIGNED WITH THE STRATEGIC PLAN OF THE SCHOOL DISTRICT UNDER §4.13 (RELATING TO STRATEGIC PLANS). THE SPECIAL EDUCATION PLAN SHALL BE DEVELOPED every 3 years consistent with the 3-year review cycle of the strategic plan of the school district under §4.13 (relating to strategic plans). The Secretary will prescribe the format, content and time for submission of the special education plan.
- (b) Each school district's special education plan shall specify special education programs that operate in the district and those that are operated in the district by the intermediate units, area vocational technical schools and other agencies.

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

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

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

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

CHILD FIND, SCREENING AND EVALUATION

§14.121 Child find.

(a) In addition to the requirements incorporated by reference in 34 CFR 300.125(a)(i) (relating to child find), each school district shall adopt and use a public outreach awareness system to locate and identify children thought to be eligible for special education within the school district's jurisdiction.

- (b) Each school district shall conduct awareness activities to inform the public of its early intervention and special education services and programs and the manner in which to request services and programs.
- (c) Each school district shall provide annual public notification, published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the school district of child identification activities and of the procedures followed to ensure confidentiality of information pertaining to students with disabilities or eligible young children in accordance with this chapter.

§14.122 Screening.

- (a) Each school district shall establish a system of screening to accomplish the following:
 - (1) Identify and provide initial screening and direct intervention for students prior to referral for a special education evaluation.
 - (2) Provide peer support for teachers and other staff members to assist them in working effectively with students in the general education curriculum.
 - (3) Conduct hearing and vision screening in accordance with section 1402 of the Public School Code of 1949 (24 P.S. §14-1402) for the purpose of identifying students with hearing or vision difficulty so that they can be referred for assistance or recommended for evaluation for special education.
 - (4) Identify students who may need special education services and programs.
- (b) Each school district shall implement a comprehensive screening process. School districts may implement instructional support according to Department guidelines or

an alternative screening process. School districts which elect not to use instructional support for screening shall develop and implement a comprehensive screening process that meets the requirements specified in subsections 14.122 (a) and (c).

(c) The screening process shall include:

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

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

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

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

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

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

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

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

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

§14.123 Evaluation.

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

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

§14.124 Reevaluation.

(a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under 34 CFR 300.536 (relating to reevaluation), shall include a certified school psychologist where

~~appropriate~~ WHEN EVALUATING A CHILD FOR AUTISM, EMOTIONAL DISTURBANCE, MENTAL RETARDATION, MULTIPLE DISABILITIES, OTHER HEALTH IMPAIRED, SPECIFIC LEARNING DISABILITY, AND TRAUMATIC BRAIN INJURY.

- (b) In addition to the requirements incorporated by reference at 34 CFR 300.536 (relating to reevaluation), a reevaluation report shall be provided to the parents within 60 school days from the date that the request for reevaluation was received from the parent or teacher, or from the date that a determination is made by the agency that conditions warrant a reevaluation.
- (c) Students WITH DISABILITIES WHO ARE identified as mentally retarded shall be reevaluated at least once every 2 years.

IEP

§14.131 IEP.

- (a) ~~Notwithstanding~~ IN ADDITION TO the requirements incorporated by reference, the following provisions apply to IEPs:
- (1) Copies of the comprehensive evaluation report shall be disseminated to the parents at least 10 SCHOOL days prior to the meeting of the IEP team. A parent may waive this 10-day rule~~PROVISION.~~

(2) THE IEP OF EACH STUDENT SHALL BE IMPLEMENTED AS SOON AS POSSIBLE BUT NO LATER THAN 10 SCHOOL DAYS AFTER ITS COMPLETION.

(2) (3) If a student with a disability moves from one school district in this Commonwealth to another, the new district shall implement the existing IEP to the extent possible or shall provide the services and programs specified in an interim IEP agreed to by the parents. THE INTERIM IEP SHALL BE IMPLEMENTED until a new IEP is developed and implemented and OR until the completion of due process proceedings under this chapter.

(3) (4) If a student with a disability moves into a school district in this Commonwealth from another state, the new school district may treat the student as a new enrollee and place the student into regular education and it is not required to implement the student's existing IEP.

(4) (5) Every student receiving special education and related services provided for in an IEP developed prior to _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.) shall continue to receive the special education and related services under that IEP subject to the terms, limitations and conditions set forth in law.

(b) In addition to the requirements incorporated by reference at 34 CFR 300.29, 300.344(b) and 300.347(b) (relating to transition services; IEP team; and content of IEP), each school district shall designate persons responsible to coordinate transition activities.

§14.132 ESY.

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

(1) At each IEP meeting for a student with disabilities, the school districts shall determine whether the student is eligible for ESY services and if so, make subsequent determinations about the services to be provided.

(2) In considering whether a student is eligible for ESY services, the IEP team shall consider the following factors, however, no single factor shall be considered determinative:

(i) Regression – whether the student reverts to a lower level of functioning as evidenced by a measurable decrease in skills or behaviors which occurs as a result of an interruption in educational programming.

(ii) Recoupment – whether the student has the capacity to recover the skills or behavior patterns in which regression occurred to a level demonstrated prior to the interruption of educational programming.

(iii) Whether the student's difficulties with regression and recoupment make it unlikely that the student will maintain the skills and behaviors relevant to IEP goals and objectives.

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

(v) The extent to which a skill or behavior is particularly crucial for the student to meet the IEP goals of self-sufficiency and independence from caretakers.

(vi) The extent to which successive interruptions in educational programming result in a student's withdrawal from the learning process.

(vii) Whether the student's disability is severe, such as autism/pervasive developmental disorder, serious emotional disturbance, severe mental retardation, degenerative impairments with mental involvement and severe multiple disabilities.

(3) Reliable sources of information regarding a student's educational needs, propensity to progress, recoupment potential, and year-to-year progress may include the following:

(i) Progress on goals in consecutive IEPs.

(ii) Progress reports maintained by educators, therapists and others having direct contact with the student before and after interruptions in the education program.

(iii) Reports by parents of negative changes in adaptive behaviors or in other skill areas.

(iv) Medical or other agency reports indicating degenerative-type difficulties, which become exacerbated during breaks in educational services.

(v) Observations and opinions by educators, parents and others.

(vi) Results of tests including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments and other equivalent measures.

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

(i) The desire or need for day care or respite care services.

(ii) The desire or need for a summer recreation program.

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

§14.133 Behavior support.

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

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

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

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

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

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

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

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

EDUCATIONAL PLACEMENT

§14.141 TERMINOLOGY RELATED TO Educational placement.

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

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

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

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

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

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

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

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

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

Multiple disabilities support - Services for students with multiple disabilities.

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

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

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

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

§14.142 Caseload for special education.

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

<i>Type of Service</i>	<i>Itinerant</i>	<i>Resource</i>	<i>Part-time</i>	<i>Full-time:</i>
<u>Learning Support</u>	<u>50</u>	<u>20</u>	<u>15</u>	<u>12</u>
<u>Life Skills Support</u>	<u>20</u>	<u>20</u>	<u>15</u>	<u>12 Elementary</u>
				<u>15 Secondary</u>
<u>Emotional Support</u>	<u>50</u>	<u>20</u>	<u>15</u>	<u>12</u>
<u>Deaf and Hearing Impaired Support</u>	<u>50</u>	<u>15</u>	<u>10</u>	<u>8</u>
<u>Blind or Visually Impaired Support</u>	<u>50</u>	<u>15</u>	<u>15</u>	<u>12</u>
<u>Speech and Language Support</u>	<u>65</u>			<u>8</u>
<u>Physical Support</u>	<u>50</u>	<u>15</u>	<u>12</u>	<u>12</u>

Autistic Support	12	8	8	8
Multiple Disabilities Support	12	8	8	8

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

(i)(1) Ensure the ability of assigned staff to provide the services required in each student's IEP.

(ii)(2) Apply to special education classes operated in the school district.

(iii)(3) Provide a justification for why the policy CHART deviates from the recommended caseloads CHART in §14.142 (relating to caseload for special education), if applicable. PARAGRAPH (A).

(4) DESCRIBE THE OPPORTUNITIES FOR PARENTS, TEACHERS AND OTHER INTERESTED PARTIES TO REVIEW AND COMMENT ON THE CHART PRIOR TO ITS SUBMISSION.

~~(3) (C) The caseloads of the district operating the program or in which an intermediate unit operates a program in the district, shall be followed when a class operated in a district contains children from more than one district. Caseloads of an intermediate unit operated program when student educational placements are located in other than a school district building and which serve students from more than one school district, shall adhere to the referring district caseload chart with the lowest number of student enrollment for the~~

~~class~~ CLASSES OR PROGRAMS WITH STUDENTS FROM MORE THAN ONE DISTRICT REGARDLESS OF WHETHER OPERATED BY A SCHOOL DISTRICT, INTERMEDIATE UNIT, OR AGENCY SHALL FOLLOW THE CASELOAD CHART OF THE DISTRICT WHERE THE CLASS OR PROGRAM IS LOCATED.

INTERMEDIATE UNIT ITINERANT SERVICES PROVIDED TO MULTIPLE DISTRICTS SHALL FOLLOW THE CASELOAD CHART UNDER PARAGRAPH (A).

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

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

~~(i)~~ (1) Graduation rates of students with a disability.

~~(ii)~~ (2) Drop-out rates of students with a disability.

~~(iii)~~ (3) Post secondary transition of students with a disability.

~~(iv)~~ (4) Rate of grade level retentions.

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

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

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

~~School district age range shall:~~

- ~~(i) Ensure the ability of assigned staff to provide the services required in each student's IEP.~~
- ~~(ii) Apply to special education classes operated in the school district.~~
- ~~(iii) Provide a justification for any deviation in the age range from these recommended age ranges: No greater difference than 3 years in chronological age from the youngest to the oldest student in elementary school (grades K-6); No greater difference than 4 years in chronological age from the youngest to the oldest student in secondary school (grades 7-12).~~

THE MAXIMUM AGE RANGE SHALL BE 3 YEARS IN ELEMENTARY SCHOOL (GRADES K-6) AND 4 YEARS IN SECONDARY SCHOOL (GRADES 7-12). A STUDENT WITH A DISABILITY MAY NOT BE PLACED IN A CLASS IN WHICH THE CHRONOLOGICAL AGE FROM THE YOUNGEST TO THE OLDEST STUDENT EXCEEDS THESE LIMITS UNLESS AN EXCEPTION IS DETERMINED TO BE APPROPRIATE BY THE IEP TEAM AND IS JUSTIFIED IN THE IEP.

§14.143 Disciplinary placements.

- (a) Notwithstanding the requirements incorporated by reference, in 34 CFR 300.519(b) (relating to change of placement for disciplinary removals), a series of nonconsecutive removals from school occurring on more than DISCIPLINARY EXCLUSION OF A STUDENT WITH A DISABILITY FOR MORE THAN 15 CUMULATIVE school days in a school year will be considered a pattern so as to be deemed a change in educational placement.

- (b) A removal from school is a change of placement for a student who is identified with mental retardation, except if the student's actions are consistent with 34 CFR 300.520 (a)(2)(i) and (ii) (relating to authority of school personnel). For this purpose the definitions at 34 CFR §300.520(d) apply.

§14.144 Facilities

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

- (1) Students with disabilities will be provided appropriate classroom space.
- (2) Moving of a class shall occur only when the result will be:
 - (i) To bring the location for delivery of special education services and programs closer to the students' homes.
 - (ii) To improve the delivery of special education services and programs without reducing the degree to which the students with disabilities are educated with students without disabilities.
 - (iii) To respond to an emergency which threatens the students' health or safety.
- (4) To accommodate ongoing building renovations, provided that the movement of students with disabilities due to renovations will be proportional to the number of students without disabilities being moved.
- (v) That the location of classes shall be maintained within a school building for at least 3 school years.

(3) Each special education class is:

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

EARLY INTERVENTION

§14.151 Purpose.

(A) SECTIONS 14.151 THROUGH 14.158 APPLY TO SERVICES AND PROGRAMS FOR ELIGIBLE YOUNG CHILDREN.

(B) Notwithstanding the requirements incorporated by reference, with regard to early intervention services:

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

§14.152 Child find, public awareness and screening.

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

§14.153 Evaluation.

Notwithstanding the requirements adopted by reference:

- (1) Evaluations shall be conducted by early intervention agencies for children who are thought to be eligible for early intervention and who are referred for evaluation.

- (2) Evaluations shall be sufficient in scope and depth to investigate information relevant to the young child's suspected disability, including, but not limited to, physical development, cognitive and sensory development, learning problems, learning strengths and educational needs, communication development, social and emotional development, self-help skills and health considerations, as well as an assessment of the family's perceived strengths and needs which will enhance the child's development.
- (3) The assessment shall include information to assist the MDT to determine whether the child has a disability and needs special education and related services and to determine the extent to which the child can be involved in the general curriculum or appropriate preschool activities.
- (4) The following timeline applies to the completion of evaluations and reevaluations under this section:
- (i) Initial evaluation or reevaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60 days after the early intervention agency receives written parental consent.
 - (ii) Notwithstanding the requirements incorporated by reference at 34 CFR 300.536 (relating to reevaluation), a reevaluation report shall be provided within 60 days from the date that the request for reevaluation was received from the parent or teacher, or from the date that a determination is made that conditions warrant a reevaluation.
 - (iii) Reevaluations shall occur at least every 2 years.

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

§14.154 IEP.

- (a) An IEP is a written plan for the provision of appropriate early intervention services to an eligible young child, including services to enable the family to enhance the young child's development. The IEP shall be based on and be responsive to the results of the evaluation.
- (b) Notwithstanding the requirements incorporated by reference, the IEP team shall include:
- (1) At least one special education teacher or special education provider.
 - (2) An agency representative familiar with ~~the general education curriculum or~~ appropriate activities for preschool children AND KNOWLEDGEABLE ABOUT THE AVAILABILITY OF THE RESOURCES OF THE EARLY INTERVENTION AGENCY. With regard to the adoption of 34 CFR 300.344(a)(4) (relating to IEP team), the agency representative ~~should~~ SHALL be qualified to provide or supervise the provision of specially designed instruction to meet the needs of children with disabilities. This

could include a preschool supervisor or service coordinator or designee of the early intervention agency.

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

the special education and related services under that IEP subject to the terms, limitations and conditions set forth in law.

§14.155 Range of services.

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

- (2) Regular preschool program or class for all or most of the school or program day, with supplemental aids and services provided by early intervention personnel.
 - (3) Early intervention services and programs provided in a specialized setting for most or all of the program day, with noneligible young children.
 - (4) Early intervention services and programs provided in a specialized setting, with some programming provided in the regular preschool program or class and opportunities for participation with noneligible young children in play or other activities.
 - (5) Early intervention services and programs provided in the home, including services which are provided in conjunction with services provided in another setting.
 - (6) Early intervention services provided in a specialized early intervention program.
 - (7) Early intervention services and programs provided in a specialized setting, including the following:
 - (i) An approved private school.
 - (ii) A residential school, residential facility, State school or hospital or special secure setting on an individual or group basis, with parental consent.
 - (iii) An approved out-of-State program.
- (d) The duration of early intervention services, in terms of program days and years, shall accommodate the individual needs of eligible young children. The duration of early

intervention services shall be developed by each early intervention agency and shall be included in its plans under §14.104 (relating to educational plans).

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

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

(II) SPECIALIZED SETTING. IN EARLY INTERVENTION PROGRAMS PROVIDED IN A SPECIALIZED SETTING, THE STAFF RATIO IS BASED ON THE DEVELOPMENTAL LEVELS OF THE CHILDREN. AT LEAST ONE STAFF MEMBER SHALL BE A CERTIFIED PROFESSIONAL. FOR CHILDREN FUNCTIONING AT:

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

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

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

(III) HOME BASED PROGRAM. IN EARLY INTERVENTION

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

(IV) EARLY INTERVENTION PROGRAM – SPEECH AND LANGUAGE.

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

(V) EARLY INTERVENTION PROGRAM – PHYSICAL AND

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

§14.156 System of quality assurance.

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

- ~~(1) Developmental appropriateness. The programs and settings for eligible young children shall include the following developmentally and age appropriate practices, and shall:
 - ~~(i) Include a curriculum based on established scope and sequence of instruction.~~
 - ~~(ii) Maximize the amount of time a child is engaged in learning experiences.~~
 - ~~(iii) Maximize parent involvement, including activities which parents can do with the child.~~
 - ~~(iv) Facilitate social interaction with normally developing children.~~
 - ~~(v) Provide experiences to stimulate learning in all domains: physical, cognitive, communicative, social-emotional and self-help.~~
 - ~~(vi) Be in an environment in which children can learn through active exploration and interaction with concrete materials, with adults and with other children.~~~~

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

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

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

- (ii) ~~Specialized setting. In early intervention programs provided in a specialized setting, the staff ratio is based on the developmental levels of the children. At least one staff member shall be a certified professional. For children functioning at:~~
- (A) ~~0-18 months — 1 staff member for every 3 eligible young children, with a maximum class size of nine.~~
 - (B) ~~18-36 months — 1 staff member for every 4 eligible young children, with a maximum class size of 12.~~
 - (C) ~~36 months and up — one staff member for every 6 eligible young children, with a maximum class size of 18 children.~~
- (iii) ~~Home based program. In early intervention programs in which the home based program is provided to eligible young children as the only program, the ratio is 10 to 20 young children per teacher. This shall also include teachers of the visually impaired, hearing impaired, and orientation and mobility specialists.~~
- (iv) ~~Early intervention program — speech and language. In early intervention programs, the speech and language itinerant program will be provided within a caseload of 10 to 50 eligible young children enrolled per teacher.~~
- (v) ~~Early intervention program — physical and occupational therapies. In early intervention programs where physical therapy or occupational therapy, or both is specified on the IEP, individual caseloads are determined with consideration of the type of services delivered and the time required for those services.~~

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

§14.157 Exit criteria.

- (a) Under section 875-301(1)(14) of the act (11 P.S. §875-301(1)(14)) children shall be exited SUBJECT TO THE PROVISIONS OF §14.161 (RELATING TO PROCEDURAL SAFEGUARDS) from early intervention based on one or more of the following criteria:
- (1) The child has reached the age of beginners and is therefore no longer eligible for early intervention services authorized under the act.
 - (2) The child has functioned within the range of normal development for a period of 4 months, with an IEP, and as verified by the IEP team.
 - (3) The parent or guardian withdrew the child from early intervention for other reasons.
- (b) If the child does not meet exit criteria and the child's IEP demonstrates that the child will benefit from services which can be provided only through special education, nothing in the law or this chapter shall prevent that placement.

§14.158 Data collection and confidentiality.

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

PROCEDURAL SAFEGUARDS

§14.161 Prehearing conferences.

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

- (1) In addition to the requirements incorporated by reference in 34 CFR 300.503 - 300.505 (relating to prior notice by the public agency; content of notice; procedural safeguards notice; and parental consent), the notice shall provide for a parent to request the school district OR EARLY INTERVENTION AGENCY IN THE CASE OF A YOUNG CHILD to convene a prehearing conference in instances when the parent disapproves the school district's proposed action or refusal to act.
- (2) When A PARENT ~~requested~~ REQUESTS AND the school district OR EARLY INTEVENTION AGENCY IN THE CASE OF A YOUNG CHILD AGREES TO PARTICIPATE IN A ~~shall convene the~~ prehearing conference, THE CONFERENCE SHALL BE CONVENED within 10 days of receipt of the parent notice and shall be chaired by the superintendent, THE EARLY INTERVENTION AGENCY REPRESENTATIVE, or ~~the superintendent's~~ THEIR designeeS.
- (3) ~~THE A PARENTS~~ OR THE SCHOOL DISTRICT OR EARLY INTERVENTION AGENCY IN THE CASE OF A YOUNG CHILD MAY WAIVE THE RIGHT TO A PREHEARING CONFERENCE AND IMMEDIATELY REQUEST AN IMPARTIAL

DUE PROCESS HEARING UNDER §14.162 (RELATING TO IMPARTIAL DUE
PROCESS HEARING AND EXPEDITED DUE PROCESS HEARING).

(3)(4) If the prehearing conference results in agreement, the provisions under §14.131
(relating to IEP) shall be applied.

(5) Within 5-calendar days of the agreement, a parent may notify the school district OR
EARLY INTERVENTION AGENCY IN THE CASE OF A YOUNG CHILD in writing of a
decision not to approve the IDENTIFICATION, EVALUATION, recommended assignment,
OR THE PROVISION OF A FREE APPROPRIATE PUBLIC EDUCATION. When a
parent gives notice not to approve the IDENTIFICATION, EVALUATION, recommended
assignment, OR THE PROVISION OF A FREE APPROPRIATE PUBLIC EDUCATION,
or if the prehearing conference does not result in an agreement, the provisions under §14.162
(relating to impartial due process hearing and expedited due process hearing) shall be
applied.

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

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

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

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

(c) A school district, ~~or the early intervention agency in the case of a young child,~~ may request a hearing to proceed with an initial evaluation, ~~or an initial educational placement~~ **OR A REEVALAUTION** when the district ~~or the early intervention agency in the case of a young child,~~ has not been able to obtain OBTAINED PARENTAL consent from the parents or in regard to a matter under subsection (b)AS REQUIRED BY 34 CFR §300.505(C)(RELATING TO PARENTAL CONSENT). **WHEN A PARENT REJECTS THE DISTRICT'S PROPOSED IDENTIFICATION OF A CHILD, PROPOSED EVALUATION, PROPOSED PROVISION OF A FREE APPROPRIATE PUBLIC**

EDUCATION OR PROPOSED EDUCATIONAL PLACEMENT, THE SCHOOL DISTRICT MAY REQUEST AN IMPARTIAL DUE PROCESS HEARING.

- (d) The hearing for a child with a disability or thought to be a child with a disability shall be conducted by and held in the school district at a place AND TIME reasonably convenient to the parents AND CHILD INVOLVED. A hearing for an eligible young child or thought to be eligible young child shall be conducted by the early intervention agency at a place AND TIME reasonably convenient to the parents AND CHILD INVOLVED. These options shall be set forth in the notice provided for requesting a hearing.
- (e) The hearing shall be an oral, personal hearing and shall be ~~open~~ CLOSED to the public unless the parents request a ~~closed~~ AN OPEN hearing. If the hearing is open, the decision issued in the case, and only the decision, shall be available to the public. If the hearing is closed, the decision shall be treated as a record of the student or young child and may not be available to the public.
- (f) The decision of the hearing officer shall include findings of fact, a discussion and conclusions of law. Although technical rules of evidence will not be followed, the decision shall be based solely upon the substantial evidence presented at the hearing.
- (g) The hearing officer shall have the authority to order that additional evidence be presented.
- (h) ~~Notwithstanding the requirements incorporated by reference at 34 CFR 300.509(a)(4), (relating to hearing rights), a~~ A written OR AT THE OPTION OF THE PARENTS, ELECTRONIC VERBATIM RECORD ~~transcript~~ of the hearing shall, upon request, be made and provided to parents at no cost.

- (i) Parents may be represented by legal counsel and accompanied and advised by individuals with special knowledge or training with respect to the problems of children with disabilities.
- (j) A parent or parent's representative shall be given access to educational records, including any tests or reports upon which the proposed action is based.
- (k) A party may prohibit the introduction of evidence at the hearing that has not been disclosed to that party at least 5-business days before the hearing.
- (l) A party has the right to compel the attendance of and question witnesses who may have evidence upon which the proposed action might be based.
- (m) A party has the right to present evidence and testimony, including expert medical, psychological or educational testimony.
- (n) Any party to a hearing has the right to obtain written, or, at the option of the parents, electronic findings of fact and decisions.
- (o) The decision of the hearing officer regarding a child with a disability or thought to be a child with a disability may be appealed to a panel of three appellate hearing officers. The panel's decision may be appealed further to a court of competent jurisdiction. In notifying the parties of its decision, the panel shall indicate the courts to which an appeal may be taken. The decision of the hearing officer regarding an eligible young child may be appealed to a court of competent jurisdiction. In notifying the parties of the decision, the hearing officer shall indicate the courts to which an appeal may be taken.
- (p) The following applies to coordination services for hearings and to hearing officers and appellate hearing officers:

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

HEARING. A hearing officer or appellate hearing officer shall promptly inform the parties of a personal or professional relationship the officer has or has had with any of the parties.

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

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

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

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

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

**EDITOR'S NOTE: Chapter 342 as it currently appears in Title 22 of the Pennsylvania
Bulletin is proposed to be deleted.**



*STATE Board
Response to
public Commentators*

**Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION**

October 2, 2000

Dear

Thank you for your letter dated October 2, 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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Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

February 5, 2001

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

Dear Mr. Nyce:

Enclosed is a copy of the final-form of State Board of Education regulations 22 Pa. Code, Chapters 14 and 342 (special education services and programs) (#6-270) for review by the Commission pursuant to the provisions of section 5(c) of the Regulatory Review Act. The act provides that the Commission shall approve or disapprove final-form regulations within 10 days of the close of the Committee review period or at its next scheduled meeting.

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

Please let me know if there is anything that you need.

Sincerely,

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

Peter H. Garland
Executive Director

Enclosure

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

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

I.D. NUMBER: 6-270
 SUBJECT: Special Education Services & Programs
 AGENCY: DEPARTMENT OF EDUCATION

RECEIVED
 2001 FEB -5 PM 4:03
 REVIEW COMMISSION

TYPE OF REGULATION

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

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2/5/01	<i>Cleaner Roman</i>	HOUSE COMMITTEE ON EDUCATION
2/5/01	<i>Rundel Richardson</i>	
2/5/01	<i>V. J. Leary</i>	SENATE COMMITTEE ON EDUCATION
2/5/01	<i>Roy A. Stapp</i>	
2/5/01	<i>J. Pagan</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL
_____	_____	LEGISLATIVE REFERENCE BUREAU

JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
ARTHUR COCCODRILLI
ROBERT J. HARBISON, III
JOHN F. MIZNER, ESQ.
ROBERT E. NYCE, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL



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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

March 12, 2001

Ms. Helen Wilhelm
321 Lakewood Drive
Fishing Creek Valley
Harrisburg, PA 17112

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

Dear Ms. Wilhelm:

Pursuant to Subsection 6(a) of the Regulatory Review Act, the Commission is required to deliver its disapproval Order to commentators who requested notification. A copy is enclosed and available on our Website at www.irrc.state.pa.us.

Pursuant to Subsection 7(a) of the Regulatory Review Act, the State Board of Education has up to seven days from March 8, 2001, to notify the Committees and Commission if it will:

1. Withdraw the regulation;
2. Proceed with promulgation of the regulation **without** revision under Subsection 7(b); or
3. Proceed with promulgation of the regulation **with** revisions under Subsection 7(c).

If you have any questions on this matter, please contact my office at 783-5417.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce
Executive Director
Enclosure
wbg

Ms. Helen Wilhelm
321 Lakewood Drive
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Harrisburg, PA 17112

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Special Education Teacher
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Telford, PA 18969

Ms. Barbara McMeekin
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Ms. Karen Malleus
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Lititz, PA 17543

Ms. Patricia Moore
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Clintonville, PA 16372

Ms. Doris Pliss
R.D. #4, Box 23C
Lake Ariel, PA 18436



RECEIVED

2001 MAR 15 PM 3:54

Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

REVIEW COMMISSION

BY



March 15, 2001

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

Dear Mr. Nyce:

At its meeting this morning, March 15, 2001, the State Board of Education voted to serve notice that the final-form regulations 22 Pa. Code, Chapter 14 and 342 will be revised and promulgated pursuant to Section 7(c) of the Regulatory Review Act.

The Transmittal Sheet for Notice pursuant to Section 7(a) of the Regulatory Review Act is enclosed.

Sincerely yours,

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

Peter H. Garland
Executive Director

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

RECEIVED

2001 MAR 15 PM 3:54

REVIEW COMMISSION



DEPARTMENT: Education ID NUMBER: 006-270

SUBJECT: Special Education Services and Programs

PA CODE CITE: 22 Pa. Code, Chapter 14 and 342

Type of Notice:

Notice that final-form regulation will be revised and promulgated pursuant to Section 7(c)
Of the Regulatory Review Act.

Filing of Notice:

<u>DATE</u>	<u>SIGNATURE</u>	<u>AGENCY</u>
<u>3/15/01</u>	<u>J. Allen</u>	Governor's Office (333 Market St.)
<u>3/15/01</u>	<u>Cleanor Brown</u>	House Committee
<u>3/15/01</u>	<u>Wagner K. Tuzik</u>	
<u>3/15/01</u>	<u>Joseph Black</u>	Senate Committee
<u>3/15/01</u>	<u>D. Hook</u>	
<u>3/15/01</u>	<u>E. Pagan</u>	Independent Regulatory Review Commission

2144

NAME Megan DeGideo
ADDRESS 718 Lorain St.
Ardmore, PA 19003

DEAR REPRESENTATIVE:

The community of Coopertown Elementary School in The School District of Haverford Township, is extremely concerned with the proposed changes in the Chapter 14 regulations. The impact of the omissions and modifications will have negative effects on our regular education classes and our special education program. Our Particular concerns are listed below:

- Time lines will go from 45 to 60 school days for evaluation and reevaluations
- Reevaluations will be every 3 years instead of 2 years
- Caseload maximums will be determined by the local school board, then approved by Pennsylvania Department of Education
- No class size limits for special education students
- Age range will be determined by school board
- Mixing categories of needs

**Please do not vote for these changes in our
Special Education Laws!!!**

Sincerely,

M. DeGideo

IRRC # 2144 Agency: State Board of Education
Title: Special Education Services and Programs

(Form A)		
NAME	ADDRESS	DATE Correspondence
Megan DeGideo	718 Loraine Street Ardmore, PA 19003	11-20-00
Sara K. Boyes	836 Martin Avenue Bryn Mawr, PA 19010	11-27-00
Joe and Pat Liberati	132 Murple Road Haverford, PA 19041	11-21-00
Sue Sharr	412 Brookline Blvd. Havertown, PA 19083	11-22-00
Reva and Haward Silver	2212 Haverford Road Ardmore, PA 19003	11-22-00
K. A. Miller	2940 Haverford Road Ardmore, PA 19003-1716	11-27-00
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S. McKissick	733 Preston Avenue Bryn Mawr, PA 19010	11-21-00
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Crystal Johnson	602 Hazelwood Road Ardmore, PA 19003	11-27-00
Barbara Frank	611 Railroad Avenue Haverford, PA 19041	11-22-00
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Tina Stump	605 Morris Lane Waltingford, PA 19086	11-22-00
Denise Derosa	2216 Avon Road Ardmore, Pa 19003-2902	11-22-00
Chris & Lisa Tierney	624 Wynnewood Road Ardmore, PA 19003	11-22-00
Cheryl Ann Wiczorek	544 Washington Avenue Haverford, PA 19083	11-22-00
Donna Conner	626 Georges Lane Ardmore, PA 19003	11-22-00
Rhonda Rowland	613 Hazelwood Road Ardmore, PA 19003	11-24-00

P. G. Reiter	303 Pheasant Hill Drive Bryn Mawr, PA 19010-2052	11-28-00
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Carole Sowers	111 Buck Lane Haverford, PA 19041	11-28-00
Judy & John Donnelly	2910 Rising Sun Road Ardmore, PA 19003	11-30-00
Kathy Janson	838 Martin Avenue Bryn Mawr, PA 19010	11-27-00
Shaun Policarpo	8 Westfield Road Ardmore, PA 19003-1010	11-27-00
Penny Davidoff	113 Stockton Road Bryn Mawr, PA 19010	11-30-00
Elizabeth Luff	2942 Haverford Road Ardmore, PA 19003	11-30-00
Gro Adrnes	2946 Nornande Road Ardmore, PA 19003	11-27-00
Michele Kulp	759 Hathaway Lane Ardmore, PA 19003	11-27-00
Shirley McClintock	316 Madison Road Springfield, PA 19064	11-30-00
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Debra Vandegrift	1091 Flora Lane Boothwyn, PA 19061	12-1-00

Cohen	9 Spring Mill Lane Haverford, PA 19041-1136	12-1-00
M. Beale	727 Preston Avenue Bryn Mawr, PA 19010	12-1-00
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Robin Willis	854 Buck Lane Haverford, PA 19041	11-28-00
Beth MacGusland	2403 Barker Circle West Chester, PA 19380	12-4-00
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Majorie R. Brennan	859 Penn Street Bryn Mawr, PA 19010-3810	11-27-00
Lorette Tofani	634 Fox Field Road Bryn Mawr, PA 19010	11-29-00
Susan and Rick Carter	681 Aubrey Avenue Ardmore, PA 19003	11-28-00
I. Pearlman	2912 Rising Sun Road Ardmore, PA 19003	11-28-00
Bradley Family %Jane M. Scull	2 Wickam Road Ardmore, PA 19003	11-29-00
Dr. & Mrs. Stephen Dobkin	5045 Brittany Lane Bryn Mawr, PA 19010	12-4-00
Nicole L. Redman	800 Biddle Street Ardmore, PA 19003	11-29-00
Betty Cerio	761 Hathaway Lane Ardmore, PA 19003	11-30-00
Maryann Schlosser	2437 Chestnut Avenue Ardmore, PA 19003	11-30-00
Chris & Doreen Cummings	2816 Morris Road Ardmore, PA 19003-1911	12-4-00
Amy Murphy	758 Oakview Road Ardmore, PA 19003	12-4-00
Chris Sessa	117 Lee Circle Bryn Mawr, PA 19010	12-2-00
Tammy Christiansen	3720 Darby Road Bryn Mawr, PA 19010	11-30-00
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