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**INDEPENDENT REGULATORY REVIEW COMMISSION  
COMMONWEALTH OF PENNSYLVANIA  
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October 29, 2003

James Buckheit, Executive Director  
State Board of Education  
333 Market Street, 1st Floor  
Harrisburg, PA 17126

Re: Regulation #6-287 (IRRC #2350)  
State Board of Education  
Special Education Services and Programs

Dear Mr. Buckheit:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulation review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce  
Executive Director  
evp  
Enclosure

cc: Honorable James J. Rhoades, Chairman, Senate Education Committee  
Honorable Allyson Y. Schwartz, Minority Chairman, Senate Education Committee  
Honorable James R. Roebuck, Jr., Democratic Chairman, House Education Committee  
Honorable Jess M. Stairs, Majority Chairman, House Education Committee  
Honorable Vicki L. Phillips, Secretary, Department of Education

## **Comments of the Independent Regulatory Review Commission**

**on**

### **State Board of Education Regulation No. 6-287**

#### **Special Education Services and Programs**

**October 29, 2003**

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The State Board of Education (Board) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on September 29, 2003. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

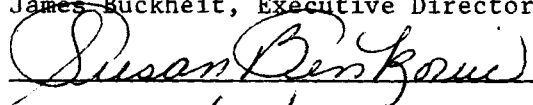
#### **General. – Reasonableness and Need.**

This proposed regulation removes the provision which allows a Local Education Agency to begin due process proceedings when a parent objects to initial special education services. The Board is making this change so its regulations at Section 14.62(c) will be consistent with requirements of the federal Department of Education's Office of Special Education Programs (OSEP). The House Education Committee and the Pennsylvania School Boards Association request that the Board formally challenge OSEP's interpretation before promulgating this rulemaking. The Board has stated that challenging OSEP's interpretation is not a viable option.

To justify its position, the Board has provided us with correspondence that includes: an e-mail requesting the Board change its regulations to conform with OSEP's interpretation; another e-mail conditioning further funding on the Board's revision of this regulation per OSEP's interpretation; and OSEP's approval of the Board's amendment. This correspondence is important in establishing the necessity of this rulemaking, as well as validating its position not to challenge OSEP's interpretation. Therefore, the Board should include the substance of the above-mentioned directives in the Preamble to the final-form regulation.

Regulation #6-287 (IRRC #2350)  
State Board of Education  
Special Education Services and Programs

James Buckheit, Executive Director

  
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Date: 10/29/03