



**PENNSYLVANIA SCHOOL PRESS ASSOCIATION**

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Original: 2367

April 2, 2004

Mr. John R. McGinley, Jr.

Chairperson

Independent Regulatory Review Commission

333 Market St.

Harrisburg, PA 17010

RE: Proposed changes made March 17 to Title 22, Chapter 12, Section 12.9, and our criticism of the Pennsylvania School Boards Association's testimony on proposed revisions to Title 22, Chapter 12, Section 12.9 presented in June 2002 by the Pennsylvania School Boards Association.

Dear Mr. McGinley:

The Pennsylvania School Press Association again commends the State Board of Education, Council of Basic Education, for its effort to hear and consider public comments on Chapter 12, Section 12.9.

As a member of that press association's *Pennsylvania Code*, Title 22, Section 12.9 Revision Steering Committee, I have presented and sent testimony to you and the council regarding proposed changes to regulations under Chapter 12 (Students). Both the Pennsylvania School Press Association (PSPA) and the Pennsylvania Newspaper Association (PNA) maintain the existing Chapter 12, Section 12.9, "Freedom of

Expression," adequately protects student's freedom of expression rights and should not be changed.

Now it seems the Council on Basic Education has changed its original position on 12.9. We share next our reservations about and objections to the changes made in that section at the March 17, 2004, council meeting. Many of these comments have been shared with our members, the media and others.

\* Free press opponents tried again in March to hobble or gut student media in Pennsylvania.

Unnamed "commentators" [actually the Pennsylvania School Boards Association through the Independent Regulatory Review Commission, we learned subsequently] temporarily succeeded in influencing two changes in the first two paragraphs of Pennsylvania's Freedom of Expression regulations, 22 PA Code, 12.9, that prevent school officials from censoring almost anything they don't like in school media.

However, Pennsylvania School Press Association (PSPA) spokespersons attending the Pennsylvania Department of Education meeting March 17 in Harrisburg persuaded the Council on Basic Education to soften the proposed last-minute changes.

Opponents of Pennsylvania's free student press, consistently lead by the Pennsylvania School Boards Association (PSBA), first tried to cut out an important reference to the U. S. Supreme Court's Tinker v. Des Moines School District opinion that is the backbone of Pennsylvania's trend-setting freedom of expression regulations. No subsequent U.S. Supreme Court opinion has overturned Tinker. The council's defense of this change apparently is that "only lawyers read the regulations," so regulation clarity is not really a serious issue, according to Mr. Jim Buckheit, State Board of Education executive director. Lawyers know where to look to find all the details they

need to understand the regulations, Mr. Buckheit said in a telephone interview on March 31. That is a curious, dangerous and anti-democratic defense of the changes, we maintain.

The Council's second target on March 17 was the stipulation that "students have the right to express themselves unless such expression materially and substantially interferes with the educational process or threatens immediate harm to the welfare of the school or community".

That proposed change would have deleted the word "immediate". During testimony by PSPA, the Council attorney restored that word but qualified it by adding "immediate or serious" to the subsection, 12.9 (b).

Paradoxically, adding "or serious" weakens the clear meaning of the subsection. How much clearer could it be than it was originally stated: "students have the right to express themselves unless such expression materially and substantially interferes with the educational process or threatens immediate harm to the welfare of the school or community"? That sentence seems to operationally define "serious", so adding "serious" is unnecessary and confusing, PSPA consultant Dr. Stephen G-M. Shenton said.

The Tinker reference was also reinserted in 12.9 (a) following Dr. Shenton's testimony, but the council would not delete previously unannounced and insufficiently unexplained references to the court's Bethel School District and Hazelwood opinions that were hastily added to that section. Mr. Buckeit's explanation of these additions, that they constitute a history of U.S. Supreme Court opinions on students' freedom of expression, seem confusing to PSPA.

Addition of those references will confuse students, teachers and administrators who rely on 12.9, PSPA Executive Director George Taylor said. When the *Pennsylvania Code* was not on line, administrators relied on school

boards association publications such as those from PSBA concerning "Student Expression" included in Indiana (Pa.) Area School District regulations. Now every person who has a PC and internet access can read the state regulations for themselves. Consequently, the historical and factual accuracy and clarity of those regulations are paramount, Dr. Shenton said.

States that allow Hazelwood to override their state guarantees of freedom of expression grant school administrators overly broad and often vague censorship powers, Dr. Shenton said.

Pennsylvania has carefully prescribed the free expression rights of students and school media since 1976. Our state regulations were adopted twelve years before the conservative Hazelwood opinion. A total of eight states including Pennsylvania have similar regulations.

"Because states have the ability to create their own laws that give their residents more civil rights protection than exists in the federal constitution, the U.S. Supreme Court has no ability to alter or limit the rights created in. . . [such] law, Superintendent of Public Instruction Bill Konig wrote in defense of the 1971 California law giving students' free expression rights in his state. Apparently, the Pennsylvania School Boards Association fails to understand or wishes Pennsylvanians to patently disregard the fact that "the U.S. Supreme Court has no ability to alter or limit the rights created in. . . [such] law" in Pennsylvania.

By including references to the Bethel School District and Hazelwood opinions in our regulations without a clear explanation that our regulations invalidate and reject those opinions, Pennsylvania will likely generate litigation such as has already occurred in New Jersey and elsewhere. In the New Jersey suit, *Desilets v. Clearwater Regional Board of Education*, its

appellate court overturned the decision of school administrators who relied on *Hazelwood* to censor movie reviews a student wrote, Dr. Shenton said.

In *Desilets v. Clearwater Regional Board of Education*,<sup>90</sup> the ACLU of New Jersey claimed that both the U.S. and state constitutions were violated by a school's censorship of material that was to appear in the school newspaper. In *Desilets*, a junior high school principal refused to publish a seventh grader's movie reviews of two R-rated films. The New Jersey Supreme Court decided that the school authorities failed to establish any legitimate educational policy that would apply to the challenged material. Therefore, even under *Hazelwood*, the censorship violated the student's First Amendment expressional rights. The case was decided solely under the U.S. Constitution. Therefore, it remains an open question whether student writers and editors might in some cases be protected from censorship under the state constitution, even though the U.S. Constitution would permit the censorship.

Unfortunately, New Jersey does not have specific regulations protecting freedom of expression in its schools. Consequently, students who can show they have been censored unfairly end up taking their state and school officials through a long and expensive litigation process, a process Pennsylvania has avoided thus far, Dr. Shenton said.

By having its own clearly written regulations, Pennsylvania has steered clear of litigation of students' free expression rights, Dr. Shenton said. But the two unnecessary changes the school boards association has lobbied for seem certain to end that.

Overturing Pennsylvania's thirty-year history of reasonable regulation of students' freedom of expression may plunge our state into a new era of divisive arguments and expensive litigation of free expression questions at a

time when our state and schools can least afford spending resources on such activities, Dr. Shenton said.

Those who understand the overwhelming importance of student media and of communication in democracy should oppose these two recent changes to our code, to 12.9, Mr. Taylor said.

Why have these two recent changes been made? We feel they are unwise and problematic political accommodations to critics of Pennsylvania's freedom of expression regulations who have waged a intense three-year campaign to gut 12.9. Let me illustrate why this is so.

The Pennsylvania School Boards Association maintains that Section 12.9 has not been modified in several years and does not reflect their understanding of several U.S. Supreme Court decisions that address [but do not override or disqualify] issues already covered in the Pennsylvania regulations. Since you may not recall all the particulars raised in testimony by Mr. Timothy M. Allwein, the school boards association's assistant executive director for governmental and member relations, I touch on them here.

Before I do so let me summarize the points I shall subsequently discuss in greater length.

- First, the school boards association feels Section 12.9 should be updated. There is no compelling defensible reason to change it, we maintain.
- Second, the school boards association feels Section 12.9 does not prohibit vulgar, offensive or lewd speech. We show the slightly revised Chapter 12, including the unrevised parts of Section 12.9, prohibit obscene speech in our schools and provide an efficient mechanism for its removal, preventing its publication in school media.

- Three, the school boards association feels the timely aspect of expression should not be accommodated in our schools. We show a variety of ways in which timeliness of expression is essential to good education.
- Fourth and last, the school boards association maintains Pennsylvania regulations governing students' freedom of expression are secondary to U.S. Supreme Court opinions that have been interpreted to bestow virtually unlimited powers of censorship on school administrators. That is false. We have shown 43 states have greater freedom of expression rights than the First Amendment provides, and eight states specifically reject the Supreme Court's attempt to narrow students' freedom of expression rights in their schools in the way that court recommends. Two other states are considering adopting specific students' freedom of expression regulations similar to the ones we have in Pennsylvania. Others are being forced to address the issue of overzealous administrators unfairly censoring student expression in litigation in state courts.

I now cover the Pennsylvania School Boards Association's objections in detail. The school boards association points out that you recommended no changes in Pennsylvania's existing Section 12.9 [until March 17, 2004] because "various student and newspaper groups have made clear their opposition to any change under this section." We, the press association, take exception to that characterization of the validity of Section 12.9. We testified the majority of states, forty-three states, provide greater freedom of expression in their state constitutions than the First Amendment provides. Those state provisions cannot be narrowed by the U.S. Supreme Court unless those states agree to do so. Indeed, eight states including Pennsylvania

have disarmed or blunted Supreme Court decisions such as Hazelwood by specifying exactly how students' freedom of expression is to be protected in those states. That is, Pennsylvania and seven other states are entitled to and have disagreed with Supreme Court rulings that severely limit student's freedom of expression and have declined to apply those rulings to their students.

• Next, the school boards association wrongly suggests it is important to consider that Pennsylvania's Section 12.9 was adopted in 1984 and does not reflect the U.S. Supreme Court decisions in 1986 in *Bethel School District v. Fraser*, and in 1988 in *Hazelwood School District v. Kuhlmeier*. "Both of those decisions placed restraints upon student speech within the school setting, which are not reflected in the current regulation." We strongly disagree for various reasons outlined herein.

First, the Pennsylvania regulations, Section 12.9, were formulated in the 1970s, litigated, and adopted. They were carefully and slightly amended in 1983 and adopted 1984. Our constitution enables us to do this. We are not compelled to limit our freedom, unless we choose to do so.

Second, the school boards association says, "In the [1986] *Fraser* decision, the Supreme Court made clear "it is a highly appropriate function of public education to prohibit the use of vulgar and offensive terms in public discourse." They say Pennsylvania's unrevised "Section 12.9(b) is silent on that point and should be amended to add language prohibiting "vulgar, offensive or lewd" speech within the school setting to reflect the *Fraser* holding." Again, we disagree.

Section 12.2.d.(10) of the State Board of Education's recommended revisions to Chapter 12 issued March 17, 2004, concerning student



responsibilities states: (It is the responsibility of the students to conform with the following:) Report accurately in student media. Not use obscene language in student media or on school premises." Furthermore, Section 12.9.c. (1) of the existing Section 12.9 stipulates "Students have the responsibility to obey laws governing libel and obscenity and to be aware of the full meaning of their expression." Also, 12.9. g. (2) of the existing regulations stipulates "School officials shall supervise student newspapers published with school equipment, remove obscene or libelous material and edit other material that would cause a substantial disruption or interference with school activities." As we read these specific statements, we understand the proposed Chapter 12 and the unrevised parts of Section 12.9 address in three ways the school boards association's complaints about obscenity.

Next, the school boards association highlighted part of 12.9 subparagraph (b) which "prohibits students from "threaten[ing] immediate harm to the welfare of the school or community." The school boards association reasons that "While that language is not inaccurate, it does not reflect a series of appellate court decisions where students were found delinquent of [making] terroristic threats by merely engaging in communications suggesting [those students] might commit a violent act within the school setting." "Nor," the school boards association maintains, "does the current language reflect findings in both the state and federal courts in Pennsylvania that the First Amendment does not offer any protections to students when they threaten violence against staff or students, regardless [of] how improbable such threats might be. The regulatory language that suggests there must be an immediacy of harm before a threat falls outside the protection of the First Amendment is inconsistent with these decisions." Therefore, the school boards association suggests

the deletion of the word "immediate" in subparagraph (b). We strenuously disagree for the reasons stated above and next.

First, the language suggested, terroristic threats, is prohibited in Chapter 12, Section 12.2.d. (5), which states: [Students must] "Comply with Commonwealth and local laws." Those laws prohibit making terroristic threats. Verbalizing threats or acting in a threatening manner are also restricted by Sections 12.2.b and c. "No student has the right to interfere with the education of his fellow students. It is the responsibility of each student to respect the rights of teachers, students, administrators and all others who are involved in the educational process." In addition, "students should express their ideas and opinions in a respectful manner."

The issue of immediacy or timeliness the school boards association raises has little to do with permitting criminal acts by students. Students shall not shout fire in a crowded theatre or make terroristic threats in hallways or elsewhere on school property. State law and Board of Education regulations do not allow them to do so and provide means to penalize them for attempting to do so.

However, the issue of immediacy or timeliness the school boards association raises is a key practical and a philosophical concept that has overwhelming impact on the quality of education in Pennsylvania, an impact that I illustrate and explore this way. When I watch Penn State football games as I often do, I never see the president of Penn State on the field telling Joe Paterno what to do. Nor have I seen the president or the coach themselves on the playing field trying to play all the positions at once or the key position during a crucial down. When Penn State has lost a game or has had a bad season, I still have not seen Joe on the field as a player or Joe disciplined or fired because his players or team failed during a play, a game or a season.

Penn State has infrequently has less than a perfect season. In sports, .500 seasons are common. Doing something well enough to win half the time is seen as a good season by many persons. Why is that?

Simply put, coaches or presidents or administrators or teachers playing in place of the players is not an option, is not how the game is played by reasonable people, no pun intended. More specifically, playing the game themselves in place of the players, doing what the players are supposed to do, even if they can do it better than those players, would signal a gross coaching or leadership failure. This is so because students, people, learn best by doing, by playing football in this example. Therefore, while playing every position may seem to be an option to some misinformed coaches or university presidents, it is not. Students learn by doing, and doing involves playing poorly, failing and succeeding.

Stopping someone's learning when they are not performing as well as they might prevents them from recognizing, understanding, and learning from their mistakes, from failing and learning how to do it more correctly next time. Both failure and success build character. Without character, there is no integrity, as Stephen L. Carter points out in his book on that subject. Without integrity and character and the civility that result from their often painful and frustrating acquisition, there can be no growth, no education, no learning, and no democracy. We owe our students the chance to fail and recover; and we provide educational experiences such as sports and publications and other activities so they will have the space and the time to learn how to fail, to recover and to succeed with little or no penalty. Interfering in what our students do, especially when they may make a mistake is both intellectually and morally wrong unless what they are

doing threatens "immediate harm to the welfare of the school or community."

What happens when we do not provide the space and time our students need to grow? In education, social promotion and grade inflation serve no useful purpose. They rob a student of the chance to fail in public, to reflect on his or her failure and to recover, to do it right the next time and consistently thereafter. They rob any person of the chance to grow, to understand both their failures and their successes, and to recognize their growth. In academic language, the learning by doing process allows students or anyone to achieve their social selves, to become individuals capable of making moral decisions, capable of judging right from wrong on their own. Such a process is gradual. Moreover, when students legitimately and successfully reach performance plateaus in elementary school, middle school, high school or college, they graduate to the next level. That is why we call them graduates.

The same is true of citizenship. People learn to function in public by learning to do it right, by writing and editing and speaking, by expressing themselves. Further, someone else cannot do it for them. No coach, no university president, no principal, no superintendent, no teacher, no adviser can do for a student what he or she must do for themselves. There is no short cut to learning to play football or expression or citizenship or anything else. Doing journalism or anything else involves letting each student fail and succeed and grow morally and intellectually in the process. Period.

At bottom, this debate of whether or how to change Section 12.9 is about how we educate people, about what works and doesn't work, about the best philosophy of education. Some say students learn by being told what to do. One famous philosopher saw such education as

analogous to serving food in a restaurant or what he called a soup shop. Soup shop educators count themselves successful if they deliver enough soup to fill up their customers, whether those customers or students are ready or able to drink, use or appreciate all the soup or not. In overcrowded schools and classrooms, some teachers rush to cover all the material the curriculum demands they cover, whether all students grasp and can apply the material or not. Other educators maintain students learn by doing, and doing takes time and space and patience. Pennsylvania's existing 12.9 accommodates those three key educational ingredients: time and space and patience. Changing it even slightly and especially for arbitrary reasons will likely upset the successful balance of those three key concepts we have achieved.

Let me conclude by addressing the last of the school boards association's points. That association maintains "Provisions in subparagraph 12.9.(c) are contrary to a 1989 decision in which the hallways of a public school during the school day were determined to be non-public forums. The courts [?] in this and other decisions have said that a school's interests are in protecting the students and making the environment conducive to an education. The First Amendment does not guarantee access to property simply because it is owned or controlled by the government." We do not read subsection (c) as they do. It is clear to us as written. Likewise, as we have already said, state law and Section 12.2 especially also answer this obscure point.

"PSBA also raises concerns with the language regarding school newspapers. In its 1988 Hazelwood decision, the U.S. Supreme Court held that school officials do not violate the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.

Moreover, in exercising editorial control, the Hazelwood court rejected the students' suggestion that school officials be permitted to exercise prepublication control over school-sponsored publication only pursuant to specific written regulations." Thus, the school boards association maintains, "The current Section 12.9 subparagraph (g)(1)-(5) is inconsistent with Hazelwood and encroaches upon school officials' rights to supervise student activities associated with the school newspaper." The school boards association argues "subparagraph (g)(2) restricts a school official's ability to remove items even when the Hazelwood standard has otherwise been satisfied." Second, that association says, "subparagraph (g)(4) requires school officials to adopt a written "prior approval procedure," which is clearly inconsistent with Hazelwood which suggests written procedures are unnecessary." Again, we disagree.

We turn once more to the rulemaking power of ~~school boards~~ GOVERNING BOARDS enumerated in Title 22, Section 12.3, School rules, [in the March 17, 2004 revision] which stipulates:

(a) The GOVERNING board has the authority to make reasonable and necessary rules governing the conduct of students in school. The rulemaking power, however, is not unlimited, [as demonstrated in David Warren Saxe v. State College Area School District, February 14, 2001 emphasis added]; it must operate within statutory and constitutional restraints. A GOVERNING board has only those powers which are enumerated in the statutes of this Commonwealth, or which may reasonably be implied or necessary for the orderly operation of the school.

(b) GOVERNING boards may not make rules which are arbitrary, capricious, DISCRIMINATORY or outside their grant of authority from the General Assembly. A rule is generally

considered reasonable if it uses a rational means of accomplishing some legitimate school purpose.

(c) Each board ~~of school directors~~ shall adopt a code of student conduct which shall include policies governing student discipline and a listing of students' rights and responsibilities as outlined in this chapter. This conduct code shall be published and distributed to students and parents OR GUARDIANS [emphasis added]. Copies of the code shall also be available in each school library.

Rational rulemaking in Pennsylvania requires that the rules applied to students be both defensible and public. Actions based on unwritten criteria known only to one person are contrary to Pennsylvania's concept of open education and government, it seems to us. Neither the unnecessarily broad authority embodied in the U.S. Supreme Court's 1988 Hazelwood decision nor the school boards association's criticism of Section 12.9 or its initial suggestion in 2001 that 12.9 be reduced to one paragraph reflect the open and rational and moral manner in which education has been governed in Pennsylvania. We find no wisdom in the school boards association's recommendation for changing our educational regulations, especially Section 12.9, to ones that are neither defensible nor public.

As we have already pointed out, one of the provisions the school boards association complains of in Chapter 12 is answered by others they failed to read or failed to read correctly. It seems to us the school boards association is unsure of what 12.9 achieves.

Finally, we suggest that the Pennsylvania School Boards Association's testimony on 12.9 reflects the sort of problems scholastic media will encounter when administrators are not provided specific guidelines such as we find in the unrevised Section 12.9.

This problem is compounded by the school boards association when it continues to give incorrect advice to its members, especially school administrators. Without the clear and unambiguous guidance and protection of Section 12.9, how are our students and media advisers and administrators and teachers to function normally and effectively? They will not be able to do so.

• As the history of Section 12.9 shows, we understand that freedom of expression in schools must be done according to general rules. Those rules, the pre March 17, 2004 Section 12.9, have been formulated, studied, litigated and revised slightly since 1974. They are sound and clear; and they have been effective for nearly thirty years. Everyone except the school boards association agrees they are sound and clear. That that association chooses not to understand the regulations as written prior to March 17, 2004, is unfortunate, but it is no reason to change Section 12.9 or to allow the minor confusing changes that were made in March to stand.

For these reasons and others we have shared in previous testimony, the Pennsylvania School Press Association and the Pennsylvania Newspaper Association recommend the existing 22 *Pennsylvania Code* Section 12.9 be approved without revision. Thank you.

Respectfully submitted,

Stephen G-M. Shenton, Ph.D.

cc: House Education Committee  
Senate Education Committee  
Independent Regulatory Review Commission



All rights reserved, except first rights, which are granted to  
the Pennsylvania School Press Association, Tuesday, November 19, 2002  
and Wednesday, April 2, 2004. 4381 words = 4/2/2004 1:11 AM



# Commonwealth of Pennsylvania STATE BOARD OF EDUCATION

December 29, 2003

Mr. Patrick J. Clair  
Goehring Rutter & Boehm  
Waterfront Corporate Park  
2100 Georgetowne Drive  
Suite 300  
Sewickley, PA 15143

Dear Mr. Clair:

Thank you for your letter dated December 23, 2003 on Final-Form 22 Pa. Code, Chapter 12 (Students).

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 Chairpersons of the House and Senate Education Committees.

The Regulatory Review Act provides that information on the final-form of regulations be mailed to public commentators at their request. If you would like to receive the final-form of these regulations when they are finalized, please make your request to me in writing at the address printed below.

Sincerely yours,

A handwritten signature in black ink that reads "Jim Buckheit".

Jim Buckheit  
Executive Director

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

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REGULATORY  
REVIEW COMMISSION

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December 23, 2003

Original: 2367

**Patricia A. White, Executive Director  
State Board of Education  
333 Market Street  
Harrisburg, PA 17126-0333**

► North Hills Office

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2100 Georgetown Drive  
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*Re: Proposed Changes – Chapter 12 Student Discipline Regulations*

Dear Members:

I write to offer comment with respect to one of the proposed amendments to 22 Pa. Code Chapter 12, which appeared in the November 22, 2003 issue of the Pennsylvania Bulletin.

I write in my own capacity as a school law practitioner of many years, and specifically on behalf of and as authorized by the Superintendents of the Hampton Township, Pine-Richland, Quaker Valley, Riverview, and Woodland Hills School Districts in Allegheny County.

The change proposed, to which objection is raised, is that which would require school districts to provide a physical copy of the respective districts' Codes of Student Conduct as part of a notice of a student expulsion hearing. Districts uniformly and categorically – in compliance with existing constitutional and regulatory provisions – provide notice to students of the rules for student conduct. They deliver copies of those codes in various means, and I am unaware of any district which does not make some provision for the oral presentation of the code to students at the beginning of each academic year, with opportunity for discussion of same. Most school districts, in order to provide a proper evidentiary basis in the event of a hearing, require a signed receipt from students and in many cases parents, acknowledging receipt of the Code of Student Conduct. Moreover, many districts now publish the annual Code of Student Conduct on websites, which are daily improving in overall content and ease of use by the student and parent communities.

Likewise, Notices of Hearing employed by school districts and their counsel (which have evolved into a fairly uniform format) make specific reference to the duly adopted and distributed Code of Conduct, and make a specific reference to its further availability to the parent or student upon request in advance of any hearing. Lastly, a copy of the Code of Student Conduct is uniformly offered into evidence as part of the “prosecution” in any student discipline hearing, so it does appropriately become a part of the record in the


event of any appeal from a school board adjudication to a Court of Common Pleas. I have personally been involved in scores of student discipline hearings, and I have never once heard a defense offered – either pro se or with the assistance of counsel – that a school district did not properly adopt and distribute its Code of Conduct to the defendant student.

One might certainly say, “what a small thing this is – simply a photocopy of the Code of Conduct, what’s the big deal?” But in this age of increasing effort to reduce the volume of paper which is created, shipped, and stored by all manner of private and public entities, this requirement seems a retrograde movement. Given that most districts provide written notice of such hearings to students and parents, and often do so by way of both first-class and certified, return-receipt mail, the regulation could have the impact of requiring the reproduction and distribution of four copies of the Code of Conduct, and the consequent waste of paper and the staff time in doing so is apparent. I am of course not privy to whatever thinking precipitated the proposed change, and would be happy to address it specifically if the underlying concern is brought to my attention. However, I think this is a small but specific instance of an additional time and expense burden being placed on a school district which has no discernable benefit for school districts at large or for the protection of due process rights of individual students.

I would be happy to respond to any inquiry you may have of me. Thank you for your attention.

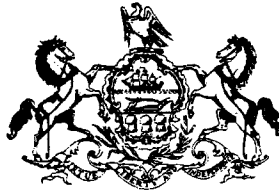
Very truly yours,

GOEHRING, RUTTER & BOEHM



Patrick J. Clair, Solicitor  
Hampton Township School District  
Pine-Richland School District  
Quaker Valley School District  
Riverview School District  
Woodland Hills School District

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**Commonwealth of Pennsylvania**  
**STATE BOARD OF EDUCATION**

INDEPENDENT REGULATORY  
REVIEW COMMISSION

December 29, 2003

Ms. Eloise Stoehr  
148 Beverly Road  
Pittsburgh, PA 15216

Dear Ms. Stoehr:

Thank you for your letter dated December 22, 2003 on Final-Form 22 Pa. Code, Chapter 12 (Students).

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 Chairpersons of the House and Senate Education Committees.

The Regulatory Review Act provides that information on the final-form of regulations be mailed to public commentators at their request. If you would like to receive the final-form of these regulations when they are finalized, please make your request to me in writing at the address printed below.

Sincerely yours,

A handwritten signature in cursive script that reads "Jim Buckheit".

Jim Buckheit  
Executive Director

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

December 22, 2003

Ms. Patricia White  
Executive Director  
State Board of Education  
333 Market St.  
Harrisburg, PA 17126-0333

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INDIANIA REGULATORY  
REVIEW COMMISSION

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Dear Ms. White,

I am writing regarding the proposed revision of Chapter 12 and the elimination of Chapter 7. As a parent, school psychologist, and supervisor of pupil services for a suburban school district of approximately 4000 students I offer comment in four areas:

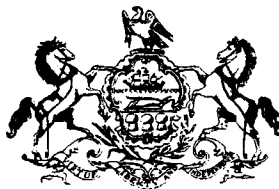
1. I applaud the elimination of corporal punishment as cited in Chapter 12.5.
2. I am concerned that in general, Chapter 12.42 does not offer enough direction and clarification regarding the specific and necessary roles of guidance counselor, school psychologist, school nurse, school social worker, and attendance officer. In this time of increasing pressures on students, violence in our communities, and distress in many families, coupled with limited local resources (included financial), school boards may reduce or eliminate support services to students because this portion of the chapter is not strong enough in describing the support that is necessary. I recommend retaining Chapter 7 and incorporating the provision of the student assistance program in it. In addition I suggest changing the word "diagnostic" in item 12.42.b.2 to "assessment" to more accurately represent the variety of services that take place.
3. In Chapter 12.42 reference is made to school districts including in their plan of student services, policies and procedures for emergency care and administration of medication and treatment under The Controlled Substance, Drug, Device and Cosmetic Act and guidelines issued by the Department of Health. The issue of administration of medication in the schools is timely and complicated. At present there is conflict as to who can administer medication in the schools and to my knowledge, this has not yet been clarified in guidelines from the Department of Health. In addition, in 12.42.e. it would appear that nurses with licenses rather than certification as a school nurse could offer health services in the schools. Is this a correct assumption? Clarification on this is needed.
4. Item 12.42.d. sets up an unnecessary adversarial relationship between parents and the school through its wording. The term "individual standardized psychological tests" need to be defined. Chapter 14 Regulations regarding special education already address the need for school districts to obtain informed consent before administering individual assessments to students, therefore this item is out of place in Chapter 12.

Thank you for considering my comments.

Sincerely,



Eloise C. Stoehr  
Parent, Pa. Certified School Psychologist, and Certified Supervisor of Pupil Personnel Services.



RECEIVED

2003 DEC 16 AM 8:55

**Commonwealth of Pennsylvania**  
**STATE BOARD OF EDUCATION**

REGULATORY REVIEW COMMISSION

December 15, 2003

Mr. Timothy Allwein  
PA School Boards Association  
774 Limekiln Road  
New Cumberland, PA 17070

Original: 2367

Dear Mr. Allwein:

Thank you for your letter dated December 12, 2003 on Final-Form 22 Pa. Code, Chapter 12 (Students).

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 Chairpersons of the House and Senate Education Committees.

The Regulatory Review Act provides that information on the final-form of regulations be mailed to public commentators at their request. If you would like to receive the final-form of these regulations when they are finalized, please make your request to me in writing at the address printed below.

Sincerely yours,

A handwritten signature in black ink that reads "Jim Buckheit".

Jim Buckheit  
Executive Director

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



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

2003 DEC 16 AM 8:55

REVIEW COMMISSION

PENNSYLVANIA  
SCHOOL BOARDS  
ASSOCIATION, INC.

December 12, 2003

Mr. James Buckheit, Executive Director  
State Board of Education  
333 Market Street, 1<sup>st</sup> Floor  
Harrisburg, PA 17126-0333

RECEIVED

DEC 15 2003

PA. STATE BOARD  
OF EDUCATION

Dear Mr. Buckheit:

Original: 2367

The Pennsylvania School Boards Association would like to take this opportunity to comment on the proposed changes to 22 Pa. Code, Chapters 7 and 12, regarding pupil personnel services and students, as revised by the State Board of Education.

We commend the board for its effort to revise these chapters, and generally support these changes with some exceptions to various sections. Since they have not been modified in several years, we understand the extensive amount of work necessary to update these regulations to reflect years of legislative changes, court decisions and current practice. We have offered our thoughts and recommendations to the State Board throughout the process. Our comments at this time will address some of the key issues.

**Section 12.5 Corporal Punishment** -- These proposed changes would prohibit corporal punishment while preserving the right of a teacher to use reasonable force in certain limited circumstances. Let me emphasize that PSBA does not advocate the use of corporal punishment, and we recognize that the use of corporal punishment in public schools often sparks a lively public debate. However, we also note that the U.S. Supreme Court has recognized its continued viability where states have enacted legislation authorizing its use.

Section 1317 of the Public School Code still provides teachers and principals with the "same authority as to conduct and behavior over pupils...as the parents, guardians or persons in parental relation to such pupils may exercise over them." Because of the delegated parental authority provided under Section 1317 of the Public School Code, the courts have ruled in various cases that a teacher may inflict reasonable corporal punishment on a pupil to enforce discipline. While the Pennsylvania Supreme Court has recognized the state's authority to promulgate regulations regarding the role of local school boards in addressing student discipline, it has said that that regulatory power is not unlimited and may be invalid for any reason, such as overbreadth.

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Mr. James Buckheit, Executive Director

December 12, 2003

Page 2

At this time we would simply note that the debate over corporal punishment is worthwhile and should be first held by the General Assembly before the State Board of Education moves to amend Section 12.5. The key question is this: In the absence of legislation that amends the School Code, would the current law that permits corporal punishment supercede any provisions of Chapter 12?

**Section 12.6 Exclusions from school** – The proposal creates a requirement that an expulsion hearing be held within 15 school days of a student’s exclusion. However, there often are instances where the scheduling of a hearing within that timeframe is problematic. A common example would be when a student retains counsel immediately before the expulsion hearing and a continuance is sought and granted. Once a mutually agreeable date is found for the rescheduled expulsion hearing, the 15 days could have expired. The original language that a formal hearing should not be “unreasonably delayed” provides districts with the necessary flexibility to accommodate continuance requests from students’ parents or attorneys without undermining the need for speedy due process. PSBA believes that the original language in subparagraph (d) should not be changed.

**Section 12.8 Hearings** – Substantive changes here address the written notice and timing of an expulsion hearing. First, PSBA believes that the specific requirements for the contents of the hearing notice are not necessary to ensure the integrity of the hearing process. PSBA raises these thoughts for consideration: (1) school districts do not necessarily have “expulsion policies” and if they do, what purpose is served with providing a copy in advance of the hearing?; (2) what are “hearing procedures?”; and (3) why does a student need to know of a right to appeal before the hearing is held? Shouldn’t we determine if the student should be expelled before discussing appellate rights?

Regarding the second issue, timing of the expulsion hearing, PSBA’s comments concerning Section 12.6 apply here as well and we believe that the language currently found in Section 12.8 (b)(1)(ix) calling for the hearing to be held “with all reasonable speed” should be retained.

**Section 12.9 Freedom of Expression** – The proposal does not change the existing regulation, and the presumed intent may be to summarize First Amendment jurisprudence as it applies to public school students. PSBA recognizes the fact that various student and newspaper groups have made clear their opposition to any change under this section. However, it is also important to consider the fact that this regulation was adopted in 1984 and does not reflect the U.S. Supreme Court decisions in 1986 in *Bethel School District v. Fraser*, and in 1988 in *Hazelwood School District v. Kuhlmeier*. Both of those decisions placed restraints upon student speech within the school setting, which are not reflected in the current regulation. We offer the following comments for your consideration.

Mr. James Buckheit, Executive Director  
December 12, 2003  
Page 3

In the *Fraser* decision, the Supreme Court made clear “it is a highly appropriate function of public education to prohibit the use of vulgar and offensive terms in public discourse.” Section 12.9(b) is silent on that point and should be amended to add language prohibiting “vulgar, offensive or lewd” speech within the school setting to reflect the *Fraser* holding.

Also, subparagraph (b) prohibits students from “threaten[ing] immediate harm to the welfare of the school or community.” While that language is not inaccurate, it does not reflect a series of appellate court decisions where students were found delinquent of terroristic threats by merely engaging in communications suggesting they might commit a violent act within the school setting. In addition, the current language does not reflect findings in both the state and federal courts in Pennsylvania that the First Amendment does not offer any protections to students when they threaten violence against staff or students, regardless how improbable such threats might be. The regulatory language that suggests there must be an immediacy of harm before a threat falls outside the protection of the First Amendment is inconsistent with these decisions. PSBA suggests the deletion of the word “immediate” in subparagraph (b).

Provisions in subparagraph (c) are contrary to a 1989 decision in which the hallways of a public school during the school day were determined to be non-public forums. The courts in this and other decisions have said that a school’s interests are in protecting the students and making the environment conducive to an education. The First Amendment does not guarantee access to property simply because it is owned or controlled by the government.

PSBA also raises concerns with the language regarding school newspapers. In *Hazelwood*, the U.S. Supreme Court held that school officials do not violate the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns. Moreover, in exercising editorial control, the *Hazelwood* court rejected the students’ suggestion that school officials be permitted to exercise prepublication control over school-sponsored publication only pursuant to specific written regulations. The current subparagraph (g)(1)-(5) is inconsistent with *Hazelwood* and encroaches upon school officials’ rights to supervise student activities associated with the school newspaper. First, subparagraph (g)(2) restricts a school official’s ability to remove items even when the *Hazelwood* standard has otherwise been satisfied. Second, subparagraph (g)(4) requires school officials to adopt written “prior approval procedure,” which is clearly inconsistent with *Hazelwood* that suggests written procedures are unnecessary.

**Section 12.14 Searches** – The proposal requires school districts to adopt reasonable policies and procedures regarding student searches. However, the language here should be updated to reflect current court decisions regarding locker searches. The proposed subparagraph (c) still requires that students be notified and given an opportunity to be present prior to a locker search. This provision seems at odds with two Pennsylvania Supreme Court decisions in 1998 and 1999

which both held that students have a lesser expectation of privacy within the school setting. The courts noted that students only possess a minimal level of privacy within their school lockers especially when school officials make clear that the use of the lockers is conditioned upon students' compliance with school rules and regulations.

The Pennsylvania decisions are not inconsistent with U.S. Supreme Court jurisprudence. In fact, the U.S. Supreme Court has reserved comment whether a student has a legitimate expectation of privacy in lockers, desks, or other school property provided for the storage of school supplies. Notwithstanding the unequivocal message in these cases that students have a limited privacy expectation within their lockers, the proposed subparagraph (c) articulates a far more stringent standard to support locker searches than what is constitutionally required.

**Section 12.32 Elements of the Plan, Section 12.33 Guidelines** – The proposal eliminates current guidelines for the collection, maintenance and dissemination of pupil records. PSBA suggests that the State Board take the initiative to create regulations on this topic, as opposed to delegating that task to the Department of Education. This would allow for an opportunity for public input through the appropriate rulemaking process.

**Section 12.42 Student Services** – The proposal creates a new section that contains provisions in the current Chapter 7, with some modifications. PSBA is concerned with subparagraphs (d) and (e) because they potentially limit the flexibility of school districts in the areas of testing and staffing student support programs. Subparagraph (d) allows parents “to challenge the appropriateness of any individual standardized psychological tests.” In the absence of a definition of the term “appropriateness,” this newly created right for parents could be abused in extreme instances. For example, if a parent acknowledges the soundness of chosen standardized psychological test to be administered to their child, but expresses a preference for a different test, may they challenge the use of the chosen test?

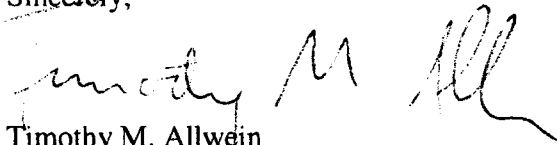
Additionally, what is the forum or procedure for districts to entertain such challenges for alleged “inappropriate” standardized psychological tests? To the extent a parent or district seeks to have a student identified for special education services or to modify a student's existing IEP, the appropriate forum to resolve such disputes is spelled out in the Individual with Disabilities Education Act, its implementing federal regulations and Pennsylvania's Chapter 14 regulations. Since the proposed subparagraph (d) does not expressly limit parental challenges regarding the “appropriateness” of such tests to the special education context could there be other challenges? If the State Board does not anticipate anything other than special education challenges to such tests, subparagraph (d) should reflect that fact by stating parents' due process rights fall within the parameters of IDEA.

Mr. James Buckheit, Executive Director  
December 12, 2003  
Page 5

Language in subparagraph (e) requiring persons delivering student services to be “specifically licensed or certified” is unnecessary since Chapter 49 regulations adequately provide for instructional, supervisory, administrative and educational specialist certificates. While PSBA agrees that staff providing student services certainly must be competent, the proposed language as drafted requiring specific licensing or certification of staff can only serve to restrict staffing decisions made by school officials. The association suggests that the language be amended to ensure that persons delivering student services “shall be specifically qualified” as required by statute or regulation.

We appreciate the opportunity to comment on the proposal and offer recommendations. Please contact me if you wish to discuss any specific issue addressed in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy M. Allwein". The signature is written in a cursive style with a large, stylized initial "T" and "M".

Timothy M. Allwein  
Assistant Executive Director  
Governmental and Member Relations

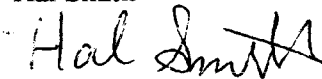
December 18, 2003

Dear Independent Regulatory Review Commission:

Thank you for considering the regulation to abolish corporal punishment -hitting children- in schools. Please include my letter in your list of material supporting the new regulation in its current form. The state government has a duty to protect the rights of its citizens. There is no question this includes protecting women and children from being hit- a flagrant violation of the UN convention rights of the child. Because the state oversees the institutions operating within its bounds, it has a duty to protect everyone inside their walls. The regulation must be passed in the form it is currently written. New Jersey officially abolished hitting children in school in 1875. In fact, the law today protects children in New Jersey private schools from being assaulted in any way. The Quakers who founded our state ban hitting children in their schools. Catholic schools all across America have banned hitting children as well. Why you believe Pennsylvania hasn't passed a law protecting its children from assault in every institution? West Virginia passed such a law in 1994 and it is not widely considered a model of Social Progress! The overwhelming majority of PA citizens are strongly opposed to children being assaulted in school! The fact that New Jersey has possibly the best education in the country shows there are no legal problems with the wording of its laws that ban all forms of corporal punishment. I hope we will succeed in reforming Pennsylvania regulations so they will conform with the 28 progressive states, not the 21 other states with poorer education. Please ensure that Pennsylvania regulations clearly ban hitting children in Public and Private schools, like those in New Jersey.

Yours,

Hal Smith



[www.stophitting.com](http://www.stophitting.com)

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 2003 DEC 22 AM 9:01  
 INDEPENDENT REGULATORY COMMISSION

Hal Smith  
 5 Primrose Ct  
 Danville PA 17821



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2003 DEC 19 AM 8:50  
REGULATORY REVIEW COMMISSION

**Commonwealth of Pennsylvania**  
**STATE BOARD OF EDUCATION**

December 17, 2003

Ms. Lynn Cromley  
Director  
Center for Safe Schools  
1300 Market Street, Suite 12  
Lemoyne, PA 17043

Original: 2367

Dear Ms. ~~Cromley~~ *Lynn*

Thank you for your letter dated December 12, 2003 on Final-Form 22 Pa. Code, Chapter 12 (Students).

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 Chairpersons of the House and Senate Education Committees.

The Regulatory Review Act provides that information on the final-form of regulations be mailed to public commentators at their request. If you would like to receive the final-form of these regulations when they are finalized, please make your request to me in writing at the address printed below.

Sincerely yours,

Jim Buckheit  
Executive Director

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



**CENTER FOR SAFE SCHOOLS**

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2003 DEC 19 AM 8:50

December 12, 2003

1300 MARKET STREET

SUITE 12

LEMOYNE, PA 17043

717-763-1661

FAX 717-763-2083

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**Mr. James Buckheit  
Executive Director  
State Board of Education  
Commonwealth of Pennsylvania  
333 Market Street, First Floor  
Harrisburg, PA 17126-0333**

**RECEIVED**

DEC 17 2003

**PA. STATE BOARD  
OF EDUCATION**

**Dear Mr. Buckheit:**

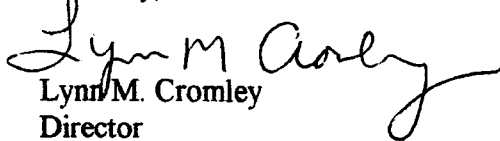
Original: 2367

This letter is in support of the proposed regulation changes to Chapter 12 that would ban use of corporal punishment in Pennsylvania's Public Schools. The changes in the regulations appear appropriate and necessary, leaving in tact important discipline measures such as the use of reasonable force. Removing the use of corporal punishment supports the intention of creating safe, caring learning environments that model effective conflict resolution processes, instead of use of force or violence to resolve discipline issues.

The negative consequences of corporal punishment are well documented by research. A frequent, yet often unrecognized outcome of corporal punishment in the school is pervasive emotional, social, and academic problems in children, often manifested in student fighting, harassment and bullying. These negative outcomes run counter to our desire to help children reach their full academic and personal potentials. Research findings also point to a correlation between corporal punishment and depression, to low self-esteem, negative psychological adjustment and poor relationships with parents and those in authority. The strongest, usually unintended, message that corporal punishment sends to the mind of a child is that violence is acceptable behaviour, that it is acceptable for a stronger person to use force to coerce a weaker one. This helps to perpetuate a cycle of violence in the family, school and in society.

The Center for Safe Schools is dedicated to promoting school safety and violence prevention across the Commonwealth. The elimination of use of corporal punishment in our schools supports these goals in a significant way, conveying to students, staff and parents that violence, in any form, will not be tolerated.

Sincerely,

  
Lynn M. Cromley  
Director



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2003 DEC 16 AM 8:55

**Commonwealth of Pennsylvania**  
**STATE BOARD OF EDUCATION**

December 15, 2003

Dr. Irwin Hyman  
National Center for the Study of  
Corporal Punishment and Alternatives  
Temple University  
253 Ritter Hall South  
Philadelphia, PA 19122

Original: 2367

Dear Dr. Hyman:

Thank you for your letter dated December 11, 2003 on Final-Form 22 Pa. Code, Chapter 12 (Students).

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 Chairpersons of the House and Senate Education Committees.

The Regulatory Review Act provides that information on the final-form of regulations be mailed to public commentators at their request. If you would like to receive the final-form of these regulations when they are finalized, please make your request to me in writing at the address printed below.

Sincerely yours,

Jim Buckheit  
Executive Director

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





# NCSCPA

NATIONAL CENTER FOR THE STUDY OF CORPORAL PUNISHMENT AND  
ALTERNATIVES - IRWIN A. HYMAN, ED.D., DIRECTOR

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2003 DEC 18 AM 8:55

INDIVIDUAL RIGHTS  
REVIEW COMMISSION

Dec. 11, 2003

James Bukheit  
Executive Director  
State Board of Education  
333 Market Street  
Harrisburg, PA 17126-0333

Original: 2367

RECEIVED

DEC 15 2003

PA. STATE BOARD  
OF EDUCATION

Dear Jim:

I am writing this letter in support of the efforts of the State Board of Education to ban the use of corporal punishment in Pennsylvania Schools as described in Section 12.5, *Recommended Changes to 22 PA Code, Chapters 7 and 12*. I am writing, not only as a long time researcher, scholar, and psychological practitioner with expertise in the area of school discipline and corporal punishment, but also as a citizen of Pennsylvania.

The State Board of Education is to be highly commended for recommending abolishment of school corporal punishment. You are supported at the national level by almost every professional organization which deals with children, almost all (if not all) recognized researchers in the areas of child development and school discipline, almost all Western democracies and 28 other states. Even the recognized researchers who favor parental spanking are against school paddling.

The recommendation of the State Board of Education offer enlightened guidelines which reflect the realities of education in Pennsylvania. Our major cities and affluent suburban school districts have long ago outlawed school corporal punishment, which is considered child abuse in any other setting in our society. This practice has been shown to be racist, sexist and practiced mostly on students from the lowest economic classes. It is already not used in 2/3 of our public schools in Pennsylvania and has been forbidden in the major Catholic archdioceses.

I hope that this recommendation will receive little or no objection from the educational establishment or citizens who are willing to consider objective, social science data in support of banning corporal punishment. As you know, I testified before a committee of the State Board of Education as to my views on the subject. I backed my testimony with my research, scholarship, clinical practice and school consultation related to discipline, corporal punishment

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Lesli A. Taylor, M.D.

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Michael Veon  
Lenore Walker, Ed.D.  
Ralph S. Welsh, Ph.D.  
Junious Williams, J.D.

**TEMPLE UNIVERSITY**

School Psychology Program, 253 Ritter Hall South, Philadelphia, Pennsylvania 19122  
(215) 204-6091

and school violence, which span over forty years. If you need further data or testimony, please feel free to call upon me.

Sincerely,

A handwritten signature in black ink, appearing to read "Irwin". The signature is fluid and cursive, with a large initial "I" and a long, sweeping underline.

Irwin A. Hyman, Ed.D., NCSP, ABPP (Clinical & School Psychology)



RECEIVED

2003 DEC 16 AM 8:54

Commonwealth of Pennsylvania  
**STATE BOARD OF EDUCATION**

December 12, 2003

Dr. Robert E. Fathman  
National Coalition to Abolish  
Corporal Punishment in Schools  
155 West Main Street, Suite 1603  
Columbus, Ohio 43215

Original: 2367

Dear Dr. Fathman:

Thank you for your letter dated December 10, 2003 on Final-Form 22 Pa. Code, Chapter 12 (Students).

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 Chairpersons of the House and Senate Education Committees.

The Regulatory Review Act provides that information on the final-form of regulations be mailed to public commentators at their request. If you would like to receive the final-form of these regulations when they are finalized, please make your request to me in writing at the address printed below.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jim Buckheit".

Jim Buckheit  
Executive Director

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

National Coalition to Abolish  
Corporal Punishment in Schools

155 W. Main Street, Suite 1603 • Columbus, Ohio 43215 • 614/221-8829

President, Robert Fathman, Ph.D.  
614/766-6688

Coordinator: Nadine Block  
614/221-8829

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2003 DEC 16 AM 8:54



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REVIEW COMMISSION

Original: 2367

10 December 2003

Patricia A. White, Executive Director  
Pennsylvania State Board of Education  
333 Market Street  
Harrisburg, PA 17126-0333

RECEIVED  
DEC 12 2003  
PA STATE BOARD  
OF EDUCATION

Re: 22 PA Code, Ch. 12: corporal punishment

Dear Ms. White

I am writing to applaud and endorse the proposed new regulation which would: *Amend § 12.5* to prohibit corporal punishment in PA public schools. As you can see from this letterhead I serve as President of the National Coalition to Abolish Corporal Punishment in Schools. In my 20 years of involvement with this issue, I have become aware of all the research findings, survey data and opinions on this issue, and I have spoken about the subject to a committee of Congress and to legislative bodies in several states.

To only touch on the central facts: school corporal punishment has now been prohibited in every country in Europe, Central and South America, Japan, China and now even a handful of Third World countries in Africa and southeast Asia. In this country, 28 states and the District of Columbia have bans, up from just 5 states 20 years ago. All of these countries and states are educating children quite successfully without hitting them or threatening to do so, and there is no movement in any of these areas to return to use of corporal punishment. Bans are entirely successful.

A ban is supported by every organization listed on this letterhead. There is no national organization that has a position favoring use of school corporal punishment. Research shows that states which ban have less school vandalism, higher graduation rates, better scores on national achievement tests, and principals feel discipline improves or stays the same – it does not deteriorate.

I hope this regulation, which passed the State Board *unanimously*, remains unchanged.

Sincerely,

Robert E. Fathman, Ph.D., President in Cooperation With:

- Prevent Child Abuse America • National Education Association • National Congress of Parents and Teachers (PTA)
- National Association of School Psychologists • American Medical Association • American Psychological Association
- National Center for the Study of Corporal Punishment and Alternatives in Schools • Council for Exceptional Children
- Child Welfare League of America, Inc. • American Academy of Pediatrics • National Association of Social Workers
- American Civil Liberties Union • National Mental Health Association • American Humanist Association
- The National Exchange Club Foundation for Prevention of Child Abuse • People Opposed to Paddling of Students (POPS)
- American Bar Association Child Advocacy Center • Parents and Teachers Against Violence in Education



**Commonwealth of Pennsylvania**  
**STATE BOARD OF EDUCATION**

December 11, 2003

Dr. Samuel Knapp  
Director of Professional Affairs  
PA Psychological Association  
416 Forster Street  
Harrisburg, PA 17102-1748

Original: 2367

RECEIVED  
2003 DEC 12 AM 8:52  
REGULATORY REVIEW COMMISSION

Dear Dr. Knapp:

Thank you for your letter dated December 10, 2003 on Final-Form 22 Pa. Code, Chapter 12 (Students).

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 Chairpersons of the House and Senate Education Committees.

The Regulatory Review Act provides that information on the final-form of regulations be mailed to public commentators at their request. If you would like to receive the final-form of these regulations when they are finalized, please make your request to me in writing at the address printed below.

Sincerely yours,

Jim Buckheit  
Executive Director

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



An affiliate of the  
American Psychological  
Association

# PENNSYLVANIA PSYCHOLOGICAL ASSOCIATION

416 Forster Street • Harrisburg, Pennsylvania 17102-1748 • Telephone 717-232-3817 • Fax 717-232-7294

December 10, 2003

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Susan M. Shanaman, J.D.

### Web site

www.papsy.org

Ms. Patricia White  
Executive Director  
State Board of Education  
333 Market Street  
Harrisburg, PA 17126-0333

Original: 2367

RE: Chapters 7 and 12

Dear Ms. White:

On behalf of the Pennsylvania Psychological Association, I am writing to comment on the proposed revisions to Chapters 7 and 12 as published in the *Pennsylvania Bulletin*. We appreciate the opportunity to comment on these proposed regulations.

### Chapter 7 (Qualifications of Student Service Personnel)

The current proposal would abolish Chapter 7 and incorporate general references to Student Services in Chapter 12. We encourage the State Board of Education to retain a separate Chapter 7. We believe that there is merit in the current regulations that describe the functions of Educational Specialists (school psychologists, school counselors, social workers, school nurses, and others). Schools are faced with many difficult problems, including violence, bullying, and the need to provide services to students with serious physical and mental disabilities. In order to address these concerns adequately, it is essential that schools respect the differences in training and competencies among the various educational specialists. Failure to do so could substantially degrade the quality of services provided to students.

To its credit, the State Board of Education has been concerned about maintaining and upgrading the quality of educational personnel in its revisions to Chapter 49 and in its implementation of Act 48. We hope that the State Board of Education will show the same concern for the qualifications of those who deliver student services. We fear that deleting Chapter 7 may result in a decline in the quality of those services.

### Chapter 12 (Psychological Testing)

Section 12.42 (d) refers to the right of parents to "challenge the appropriateness of any individual standardized psychological tests." It is not clear whether the Board is referring to challenging individual (single) tests that may be administered to students or whether it is referring to tests that are administered to one student in isolation (a single student). This needs to be clarified.

## Chapter 12 (Coordination of Services)

Standard 12.42 (a) states that “services offered by community agencies in public schools shall be coordinated by and under the general direction of the local education agency.” This is a welcomed provision and would clarify any problems that might arise concerning the ultimate authority in the event that conflicts arise.

## Chapter 12 (Corporal Punishment)

We commend the State Board of Education for proposing to abolish corporal punishment in the public schools of Pennsylvania. It is our belief, supported by considerable research, that the corporal punishment of students tends to harm them and does not promote good behavior in the long run. There are far more effective and humane techniques that can be used to promote good behavior.

The State Board of Education has, to its credit, already abolished corporal punishment for children placed in special education. Also, Pennsylvania prohibits corporal punishment of children placed in its foster homes and residential treatment facilities for children. Abolishing corporal punishment in the public schools for all children appears to be a logical next step. We commend the State Board of Education for this important change.

Thank you again for allowing us the opportunity to present our perspectives on these important issues.

Sincerely,



Samuel Knapp, Ed.D.  
Director of Professional Affairs

cc: Independent Regulatory Review Commission  
House Education Committee members  
Senate Education Committee members



**Commonwealth of Pennsylvania**  
**STATE BOARD OF EDUCATION**

December 9, 2003

Ms. Terry L. Hasenauer  
4304 12<sup>th</sup> Avenue  
Temple, PA 19560

Original: 2367

RECEIVED  
2003 DEC 12 AM 9:52  
REGULATORY COMMISSION

Dear Ms. Hasenauer:

Thank you for your letter dated December 8, 2003 on Final-Form 22 Pa. Code, Chapter 12 (Students).

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 Chairpersons of the House and Senate Education Committees.

The Regulatory Review Act provides that information on the final-form of regulations be mailed to public commentators at their request. If you would like to receive the final-form of these regulations when they are finalized, please make your request to me in writing at the address printed below.

Sincerely yours,

Jim Buckheit  
Executive Director

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



RECEIVED  
2003 DEC 12 AM 8:53

REVIEW COMMISSION

Terry L. Hasenauer  
4304 12<sup>th</sup> Avenue  
Temple, PA 19560

To whom it may concern:

Comment - The PA Code Chapter 12 needs to address, in detail, the student's right concerning them being questioned about activities that do not involve school property or school functions. Case in point: On Monday September 8, 2003, at Hamburg Area High school Hamburg, PA, 3 students were pulled from class after a school official heard a rumor, or "hear-say," that other students were drinking on Saturday night. They were brought to the office for questioning. At no time were the parents notified prior to the questioning. Only after the students were interrogated and intimidated in the office by administrators were the parents notified. This is only one of several "off-grounds infractions" that have been handled in this manner at the school. Do students have less rights pertaining to "off-grounds infractions" in school than out school? Students should not be questioned or intimidated about "off-grounds infractions" by school personnel without the parents being notified. Police officers cannot question a juvenile, without the parents' permission, so why is it that students don't have the same rights in school? Do they deserve fewer rights in school than out? The gray area is the "off-grounds infractions" concerning the students.

According to *The Parent Rights and Responsibilities- Administrative Prerogatives and Policies: A Guide for Administrators and Supervisors*, which is a publication of the Pennsylvania Association of Elementary and Secondary School states on page 75:

It is clear that the school has some authority to deal with "off-grounds infractions" by students, but the latitude of the authority is not very broad and prudent judgment is always advisable when a student is punished for conduct which would normally be under the control of the parent.

So why are school policies allowing what comes short of Gestapo tactics to be administered to our children? An overzealous school official takes the students' rights far beyond what common law entitles our own law enforcement to do. Why? Parents need to be contacted prior to any kind of questioning about "off-grounds infractions," where a student is taken out of class. Rumor and "hear-say" are not reasons to pull a student from class. Do our school officials have nothing better to do than act as criminal investigators? Should school officials be responsible for my son/daughter on Saturday nights? It was thought to be the parents' responsibility. Where does the arm of the school district stop? Students are asked by school policies to be responsible; however, Saturday nights away from school property and activities are my responsibility as a parent. It is not the school's responsibility! We all made mistakes when we were young, and most, if not all of the time, the issues were handled by our parents. Why do we allow the school to punish

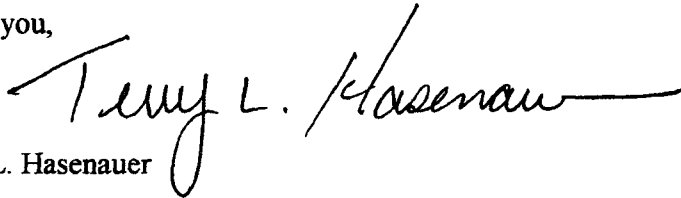
students more after the parents have already done their jobs? Why is the punishment for student athletes different or harsher than for the students who aren't involved in sports?

A few items of concern:

1. The rights of a student in school versus the rights outside of school
2. "off-grounds infractions"
3. Notifying parents prior to questioning
4. School boards need some kind of guidance concerning the student rights

In closing, I am quite concerned that school officials can bring a student to the office for questioning without contacting the parents prior to the questioning. Students need to have the same rights in school as outside of school. Furthermore, the PA Code Chapter 12 needs to clarify the gray area concerning "off-grounds infractions." I am deeply concerned that a situation similar to this would happen to my children.

Thank you,

A handwritten signature in black ink that reads "Terry L. Hasenauer". The signature is written in a cursive style with a long horizontal flourish at the end.

Terry L. Hasenauer



Original: 2367

**Commonwealth of Pennsylvania**  
**STATE BOARD OF EDUCATION**

December 29, 2003

Dr. Gary Ledebur  
Colonial School District  
230 Flourtown Road  
Plymouth Meeting, PA 19462-1296

Dear Dr. Ledebur:

Thank you for your letter dated December 4, 2003 on Final-Form 22 Pa. Code, Chapter 12 (Students).

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 Chairpersons of the House and Senate Education Committees.

The Regulatory Review Act provides that information on the final-form of regulations be mailed to public commentators at their request. If you would like to receive the final-form of these regulations when they are finalized, please make your request to me in writing at the address printed below.

Sincerely yours,

A handwritten signature in cursive script that reads "Jim Buckheit".

Jim Buckheit  
Executive Director

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

RECEIVED  
2003 DEC 30 AM 8:44  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

RECEIVED

DEC 4 2003

**CSD**

**COLONIAL SCHOOL DISTRICT**  
230 Flourtown Road  
Plymouth Meeting PA 19462-1296  
610/834-1670 (Telephone)  
610/941-0958 (FAX)

**PA. STATE BOARD  
OF EDUCATION**

Pupil Services Department

December 4, 2003

James Buckheit  
Executive Director  
State Board of Education  
Commonwealth of Pennsylvania  
333 Market Street  
Harrisburg, PA 17126-0333

RECEIVED  
2003 DEC 30 AM 8:44  
STATE BOARD OF EDUCATION  
REVIEW COMMISSION

Dear Mr. Buckheit:

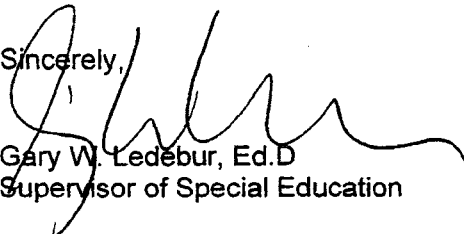
I write in response to the State Board of Education's proposed rulemaking on pupil personnel services and students (22 PA Code Chapter 12). The deletion of current Chapter 7 and the amendments to Chapter 12 are a significant improvement in the regulations and will provide increased clarity and direction to those of us who are on the front line of educating Pennsylvania students. The changes will also align the regulation with current "state-of-the-art" practices in student services.

Specifically I write to support the prohibition of corporal punishment in our schools. Although many educators and organized professional and lobbying groups will argue that this prohibition is not necessary, I challenge that position.

Even though most school districts in Pennsylvania do not utilize corporal punishment, the fact that it is expressly allowed in the current regulations sends a message to our children that violence is an acceptable way to change behavior or solve problems. With the national and state focus on creating safe schools, it is critical that the Commonwealth send a strong message to students that the use of violence, by anyone, in a public school is not acceptable.

The State Board should be commended for its enlightened leadership in this area.

Sincerely,

  
Gary W. Ledebur, Ed.D  
Supervisor of Special Education



RECEIVED

2003 DEC 10 AM 8:44

Commonwealth of Pennsylvania  
**STATE BOARD OF EDUCATION**

December 9, 2003

Mr. Stephen Paesani  
Children & Adolescent Training Specialist  
Behavioral Health Training and Education Network  
520 N. Delaware Avenue, 7<sup>th</sup> Floor  
Philadelphia, PA 19123

Original: 2367

Dear Mr. Paesani:

Thank you for your e-mail letter dated December 9, 2003 on Final-Form 22 Pa. Code, Chapter 12 (Students).

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 Chairpersons of the House and Senate Education Committees.

The Regulatory Review Act provides that information on the final-form of regulations be mailed to public commentators at their request. If you would like to receive the final-form of these regulations when they are finalized, please make your request to me in writing at the address printed below.

Sincerely yours,

A handwritten signature in cursive script that reads "Jim Buckheit".

Jim Buckheit  
Executive Director

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

**Benkovic, Susan**

RECEIVED

**From:** SPaesani@pmhcc.org  
**Sent:** Tuesday, December 09, 2003 9:45 AM  
**To:** 00statbd@psupen.psu.edu  
**Subject:** Comments on Proposed Rule Making

2003 DEC 10 AM 8:44

REVIEW COMMISSION

Original: 2367

Dear Members of the State Board of Education,

It is with great interest that I read "Proposed Rule Making, 22 PA Code Chs. 7 & 12" as found in the PA Bulletin (33Pa.B. 5735).

Having been involved with the Student Assistance Program (SAP) for many years, I was especially pleased to see the inclusion of SAP in the listed services provided to students (Sec. 12.43). From my experience, SAP has is an indispensable resource for our school communities. We are just beginning to realize its full potential as a powerful service to all.

To highlight SAP's possibilities, may I suggest a change or addition in the Proposed Rule Making? In Section 12.41, Definitions, SAP is defined as a process for students experiencing difficulties with drug, alcohol or mental health problems. While this is certainly true and was the focus of the early years of SAP, the scope has been expanded in recent years. BEC 24 P.S. 15-1547 states that SAP is "designed to assist school personnel to identify issues, including alcohol, drugs and others, which pose a barrier to a student's learning and school success".

The innovative phrase is "a barrier to a student's learning". This allows SAP to an appropriate resource in all areas of school where a child is experiencing a barrier to learning. SAP is all about helping in the removal of those barriers, within appropriate limits, and helping students succeed in school.

I would strongly encourage you to include the language from BEC 22 PA. 15-1547 in the proposed definitions in Chapter 12.

Thank you for your attention and concern.

Stephen Paesani

++++  
Stephen Paesani  
Children & Adolescent Training Specialist  
Behavioral Health Training and Education Network  
520 N. Delaware Avenue. 7th Floor  
Philadelphia, PA 19123  
215-923-2116 x 289