



REVISED PROPOSED AMENDMENTS TO
22 PA CODE CHAPTERS 4 and 339
April 18, 2006

The Education Law Center, the Disabilities Law Project, and the ARC of PA, submit these revised proposed amendments to proposed 22 PA Code Chapters 4 and 339, which were published in the PA Bulletin. The three groups have had substantive discussions with the leadership of PDE's Bureaus of Special Education and Career and Technical Education regarding our concern that PA students with disabilities do not have full access to vocational-technical education opportunities, including Area Vocational Technical Schools (AVTSs). In some regions, AVTSs are the only options for students seeking technical education. Students denied access to or supports in AVTSs in those regions are deprived of any meaningful vocational education opportunity.

We have received complaints from families that AVTS and other vocational programs are failing to admit students with significant disabilities; are not providing them with sufficient support in either the academic or technical parts of the program; or are unnecessarily limiting their access to particular vocational options. Some of these complaints have resulted in litigation against a school district, an area vocational technical school, and the Department.

We are grateful that the Department has been willing to discuss amendments to Chapters 4 and 339 that could help fix many of these problems statewide and without further litigation. We believe that the following changes to the published regulations are needed to ensure compliance with federal and state law, including §504 of the Rehabilitation Act, the Individual with Disabilities Education Improvement Act, and the ADA.

Chapter 4

§4.13(b): Every AVTS, in conjunction with and with the approval of the majority of its participating school districts, shall develop and file with the Department a strategic plan once every 6 years.... The strategic plan shall incorporate appropriate components of the strategic plan submitted under subsection (a) by

participating districts, and shall describe how students with disabilities shall be admitted to and [supported] accommodated in its programs.¹

§4.31(a): Vocational-technical education courses shall be developed in the planned instruction format and shall be accessible to all high school students attending those grades in which vocational technical courses are offered. All students and their parents or guardians shall be informed of the students' rights to participate in vocational-technical programs and their courses, and that students with disabilities are entitled under the Individuals with Disabilities Education Act §504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act to special [supports] services and accommodations such as modified equipment or additional academic support in accordance with their Individualized Education Programs to help them succeed in such programs. Students who complete approved vocational-technical education programs shall have their occupational competency assessed, with accommodations if necessary, by completion of the appropriate assessment under the PA Skills Certificate Program or by completion of another occupational competency assessment approved by the Department. Students shall also demonstrate proficiency in meeting academic standards as required under §4.24(a) (relating to high school graduation requirements) and 4.12(f), 4.24(e)(relating to children with IEPs).

§4.31(c): Vocational-technical education programs shall consist of a series of planned academic and vocational-technical education courses that are articulated with one another so that knowledge and skills are taught in a systematic manner. When appropriate, vocational-technical education programs must adopt, in program areas for which they are available, industry recognized skills standards, and may also include cooperative vocational-technical education and participation in vocational student organizations to develop leadership skills. However, vocational-technical education programs shall not use industry recognized skills standards as a basis for excluding a student with a disability from a vocational program on the grounds that he cannot meet those standards if the student can benefit from attending that program with reasonable [supports] accommodations or services as determined by their IEP teams.

§4.33(c): An occupational advisory committee shall be established for each vocational-technical education program or cluster of related programs offered by a school district or AVTS. The Committee shall be appointed by the board of directors, and a majority of the members of the committee shall be employees and employers in the occupation for which training is provided, and at least one member shall be a Special Education [Director] Administrator from one of the school entities served by the AVTs. The Committee shall meet at least twice each year to advise the board, administration and staff on curriculum, equipment, instructional material, safety requirements, program evaluation and other related

¹ The proposed ELC language is underlined. The remaining text contains the current language and the changes proposed by the State Board.

matters, and how the program can be adapted to meet the needs of students with disabilities....

Chapter 339

§ 339.1a. Definitions.

Action plan--Formal strategies and accountability plans for ensuring that all students are equipped with the academic and occupational skills they need for career success commensurate with their [potential] ability and for lifelong learning.

Employment – Employment includes competitive employment, and if appropriate for students with disabilities, supported employment.

IEP--Individualized Education Program under 22 PA CODE § 14.131 (relating to IEP).

The above recommendations clarify that, for students with disabilities, employment can include supported employment, and that students have a range of abilities.

§ 339.2. Operation.

A board of school directors, acting individually or in conjunction with other boards of school directors, may establish, operate, maintain and conduct rigorous academic and career and technical education vocational or technical education programs or both, with appropriate [supports] accommodations [and modifications] for students with disabilities as required by §504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, which can include adaptive equipment and machinery as when needed, and services as required by the students' Individualized Education Programs under the Individuals with Disabilities Education Act, under the approved strategic plans.

This recommendation clarifies that vocational programs must not only admit students with disabilities, they must provide those students with needed supports and modifications.

§339.4 Program approval.

(b) Application for approval or reapproval. Programs shall be reviewed for compliance with this chapter. Application shall be made on forms supplied by the Department, which must include, but not be limited to:

(2) Evidence that the program prepares students for employment in high priority occupations or other occupations supported by local labor market information and is supported by local employers.

This recommendation adds the term “employment,” which as newly defined includes supported employment.

(8) Assurance that support or special services are available to the students when disadvantaged, disabled or [limited English-speaking students] English Language Learners are enrolled as required by Chapters 14 and 15 (relating to special education programs and services; and

protected handicapped students) and 22 Pa. Code Sec. 4.26 and Title VI of the Civil Rights Act of 1964 (relating to English Language Learners). These students are provided with the support and assistance as written in the IEP or service agreement, and that are necessary to succeed in the vocational program.

This change adds the legal authority relating to LEP students (the provision already includes the legal references for children with disabilities).

- (9) Assurance shall be given that students have the appropriate competencies in mathematics, science and English prior to entrance in a vocational training program and that subsequent instruction in these academic areas is appropriate to their chosen area of occupational training. However, students with disabilities shall not be denied admission solely because of their academic achievement levels unless, as determined by their IEP teams, the students cannot benefit from the vocational program even with [supports] services and accommodations.

*This is a key change. As noted above, it is important that the effort to upgrade the academic content of vocational education programs not serve as an excuse to exclude students whose disabilities who, with supports, can benefit from an AVTS or a particular educational program. It also acknowledges that it is the IEP team, including the parent and school representatives, who are charged with making this and other programmatic decisions. We believe that this standard is mandated by federal law, in particular Section 504 of the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act (IDEA), and the Americans with Disabilities Act (ADA). It is the standard adopted in the settlement agreement in *Serventi v. Bucks County Technical High School*.*

- (13) Evidence that joint planning with sending schools around academic and other needs of attending students occurs, including the needs of students with disabilities and English Language Learners.

This recommendation is to ensure that the sending school and the AVTS plan to meet the needs of special needs students.

(d)(1) Retain approval.

(i) Accountability standards. School entities shall implement the following standards, which shall be subject to review by the Department:

(B) Student performance on achieving academic standards will be measured, and the Pennsylvania System of School Assessment (PSSA), the PA Alternate System of Assessment (PASA), or other alternative assessments included in Chapter 4 will be used to define the level of academic achievement.

PDE has developed the PASA to assess students with significant cognitive disabilities, and is developing alternative achievement standards and assessments for students with severe disabilities that prevent them from achieving at the same level as their same aged peers. The “accountability standards” should not penalize AVTSs or vocational programs whose students take alternate assessments as determined by their IEP teams. Otherwise, the

schools will have a disincentive to admit these students for fear that the students' achievement scores will reflect badly on the schools.

PLANNING

§ 339.13. Local advisory committee.

The local advisory committee as set forth in § 4.33(a) (relating to advisory committees) shall also include representatives authorized by the workforce investment board, civic organizations, parents and students, a special education [director] administrator for a participating school entity, and higher education institutions.

An informed voice for students with disabilities, a special education director from a sending school district, should participate in the AVTS's local advisory committee – and parents and students should also be represented.

CURRICULUM

§ 339.21. Admissions.

An admissions policy developed by the local education agency regarding entrance to a vocational education program must state whether enrollment is unlimited or limited. If enrollment is limited, an admissions policy shall include nondiscriminatory eligibility requirements for the purpose of predicting a student's success in a given program. A student with a disability shall be considered successful if, as determined by the IEP team, the student, with [supports] services and accommodations, can benefit from the program.

(1) When the number of students predicted to be successful in a given program exceeds the number of openings available, an admissions policy must include a nondiscriminatory selection procedure, as required by current Federal and Commonwealth statutes, regulations and guidelines. Under a non-discriminatory selection procedure, a student with a disability shall not be denied admission to or terminated from a vocational education program on the basis that the student cannot meet the statewide performance measures and standards set by the Secretary if the student, with [modifications] accommodations, or [supports] services as determined by the student's IEP team, can meet those standards and/or benefit from the program. [as determined by the student's IEP team.]

This added language sets a flexible standard for determining what constitutes "success" for a student with a disability, and whether an admissions selection procedure is discriminatory. The standard is based on Section 504 of the Rehabilitation Act of 1973, the IDEA, and the ADA. It prevents a vocational program from excluding a student with a disability solely because the student cannot achieve at the same academic level as peers without disabilities if the student's IEP team determines that the student can benefit from the program with supports and accommodations. Some students with disabilities can meet age and grade appropriate standards with support or IEP services. Still others can benefit and learn marketable skills or skills that that will be helpful in non-competitive employment. Vocational programs must admit, support, and serve students with this range of disabilities and potential.

(7) IEP and service agreement team meetings, when scheduled by the school district, must give notice to the career and technical education instructor assigned and shall be attended by the program instructor to which the student is seeking admission or is attending.

The recommendation clarifies that integrated planning is needed when a student with a disability is seeking admission to a vocational program, and during the IEP or service planning meetings that occur when the student is already attending such a program.

§ 339.22. Program content.

(a) Occupational program requirements. The primary objectives of an occupational program are to prepare students for high priority occupations or other occupations supported by local labor market information and is supported by local employers, and for successful employment and lifelong learning through acquisition of high-level academic, technical and career development skills commensurate with the student's [potential] ability, efficient work habits and attitudes about the personal, social and economic significance of work. Occupational programs include vocational agriculture, vocational business education, vocational health occupations, vocational marketing and distributive education, vocational occupational family and consumer sciences, and vocational trade, industrial and technical education. Occupational programs must be standards-based, meet licensure or industry skill certification or Pennsylvania Skills Certificate, as required, provide extended classroom experience, and meet minimum time requirements. The specific requirements of the foregoing elements are as follows:

(1) Standards-based. Programs must have standards-based plans. A standards-based plan is an instructional system that is planned and managed by the teacher, based upon occupational analysis and clearly stated performance objectives that are deemed critical to successful employment as recommended by occupational advisory committees. The instructional process must derive its content from the task performed in each occupation and job and provide for the assessment of student performance on the basis of preset performance standards. Standards-based plans must include:

(b) Exceptional programs requirements. An exceptional program will be approved if the local education agency documents that it is needed to meet the vocational education requirements of students with disabilities, in the least restrictive environment, in accordance with their individualized education programs.²

These changes again acknowledge that students in vocational programs have a broad range of potential. Section 339.22(a)(1)(b) would also permit an LEA, with the Secretary's approval, to operate a substantially different program for students with disabilities so long as it complies with the IDEA's LRE requirement and it demonstrates that the program is needed to meet the needs of students with disabilities. .

GUIDANCE

§ 339.32. Services.

² A version of this language is in the current regulations, but the proposal would delete it in its entirety.

The plan shall be designed to promote equal opportunity and include the following guidance service areas:

(1) Assistance to students in selecting vocational curricula that meet their needs and address their interests. For students with disabilities, this will include working with the IEP teams to identify the [supports] services or accommodations the students will need to succeed in a particular vocational program.

(6) Support of a placement service that is developmental and makes provisions for the transition from school to the world of work. For students with disabilities this will include participating in transition planning.

Guidance staff must work with IEP teams to ensure that students with disabilities make the right vocational choices, and receive the support they need to succeed. Also, IDEA mandated transition planning is the vehicle by which school entities plan for post-secondary educational and vocational options. Guidance staff needs to be part of this process.

EVALUATORS

§ 339.61. Evaluation.

(a) General rule. Approved vocational education curriculum shall be subject to review by the Secretary to determine compliance with this chapter.

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(c) Report. The Department evaluation team shall file a report with the board of school directors and area vocational-technical school board of directors within 30 calendar days after the on-site evaluation.

(d) Content. The report must identify areas that are not in compliance with § 339.1 (relating to scope of applications) and other applicable statutes, regulations and guidelines. The report must specifically include the extent to which students with specific disabilities are admitted to the AVTS and specific vocational programs, and the [supports] services and accommodations provided by the program to those students, and whether the program is fully accessible and is barrier-free.

The data that is currently maintained on students with disabilities is inadequate for the Secretary and the public to determine whether these students are getting fair access to these programs and to specific vocational options, whether the students are receiving necessary supports, and whether the programs are barrier-free. This addition would require the Secretary to gather (and the vocational programs to maintain) this essential information.