March 8, 2006

Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101

To Whom It May Concern:

Attached, please find a copy of a letter from the Bureau of Career and Technical Education regarding a statement letter from Janet Stotland on proposed 22 PA. Code, Chapter 339 Vocational Education.

If you have any questions or concerns, you may contact me at 717-787-5530 or lburket@state.pa.us.

Sincerely yours,

Lee Burket, Ed.D.
Acting Director
Bureau of Career and Technical Education
March 8, 2006

Janet Stotland
Education Law Center
The Philadelphia Building
1315 Walnut Street
4th Floor
Philadelphia, PA 19107

Dear Ms. Stotland:

Thank you for your statement letter of February 27, 2006 received March 2, 2006 on proposed 22 Pa. Code, Chapter 339 Vocational Education.

Your letter is considered as official public comment. Pursuant to the provisions of the Regulatory Review Act, copies of your comments will be 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 proposed and final 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 send your request to me at the address printed above.

Sincerely yours,

Lee Burket, Ed.D.
Acting Director
Bureau of Career and Technical Education

cc: Senator Rhoades
Senator Musto
Representative Stairs
Representative Roebuck
IRRC.
Lee Burket, Acting Director  
Bureau of Career and Technical Education  
333 Market Street  
Harrisburg, PA 17126-0333

RE: Proposed Chapter 339

Dear Ms. Burket:

These comments are submitted on behalf of the Education Law Center, the Disabilities Law Project, The Arc of Pennsylvania, and the Pennsylvania Protection and Advocacy, Inc. We are statewide advocacy groups dedicated to improving educational and life outcomes for persons with disabilities. For students with significant disabilities, quality public vocational education programs can be the last best chance for academic success and for graduating from school with marketable skills. It is our experience that this opportunity is often less available to students with disabilities than it is to other students — that youth with disabilities confront discriminatory admission requirements and are not sufficiently welcomed and supported in a range of vocational options.

The undersigned groups have submitted comments to the Chapter 4 proposals that relate to strategic planning by and with AVTSs. We understand that Chapter 339 is primarily focused on achieving the laudable purpose of bringing vocational education in Pennsylvania in line with the standards-based reform and rigorous academic standards that apply elsewhere in Pennsylvania’s public education system. Most students with disabilities can benefit from these reforms — but only if they can get “through the door” and into vocational programs, and if those programs support them appropriately. In addition, there are some students whose disabilities are so severe that they will not be able to participate in the full range of vocational options, or will not be competitively employed. These students must also have access to high quality vocational programs that allow them to benefit and learn commensurate with their potential.

The proposals that follow are directed towards achieving this balance. The text is the current regulatory proposal with our suggestions in capital letters and explanatory notes in bold italics.
§339.1. Scope of applications.

(9) PAYMENTS ON ACCOUNT OF SERVICES FOR STUDENTS WITH DISABILITIES
(Q: what sources of revenue are available to vocational programs for educating these students?)

AVTSs must receive extra payment on behalf of students with disabilities, but it is unclear to us how much and from what sources. The source of funding for these services should be listed with the other “payments” in §339.1.

§ 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 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 potential.

§ 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 AND MODIFICATIONS FOR STUDENTS WITH DISABILITIES, INCLUDING ADAPTIVE EQUIPMENT AND MACHINERY WHEN NEEDED, 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 SOLEY BECAUSE OF THEIR ACADEMIC ACHIEVEMENT LEVELS UNLESS, AS DETERMINED BY THEIR IEP TEAMS, THE STUDENTS CANNOT BENEFIT FROM THE VOCATIONAL PROGRAM EVEN WITH SUPPORTS.

This 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 ALTERNATE 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.

(i) Private School Contracts. Contractual arrangements may be made by public schools with approved private institutions to provide secondary or postsecondary vocational-technical instruction only in occupational fields for which public school programs are unavailable, OR FOR WHICH THE PUBLIC SCHOOL PROGRAM IS NOT APPROPRIATE FOR A STUDENT WITH A DISABILITY, EVEN WITH SUPPORTS AND MODIFICATIONS, AS DETERMINED BY HIS OR HER IEP TEAM.....

Public schools should be permitted to contract with programs that offer vocational opportunities at a different level than a public vocational program. For example, if the IEP team concludes that a student with a significant cognitive disability cannot benefit from the baking program offered by an AVTS, even with supports, his school district must be able to place that student at a private school that offers an appropriate level baking program.

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 FROM 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


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, 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, AND SUPPORTS 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 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, 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.\(^1\)

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.

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 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

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\(^1\) A version of this language is in the current regulations, but the proposal would delete it in its entirety.
VOCATIONAL PROGRAMS, THE SUPPORTS PROVIDED BY THE PROGRAM TO THOSE STUDENTS, AND WHETHER THE PROGRAM 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.

We appreciate this opportunity to comment. We believe that our proposed recommendations to Chapters 4 and 339, or other language of similar import, are essential if the Department of Education is to meet its obligations under the ADA, Section 504, the IDEA, and the Carl Perkins Act. By adopting our proposals, the Department and the State Board will set a standard for non-discriminatory treatment. But if the Department and the State Board do not act to remedy the widespread problems reported by families of students with disabilities, they will set the stage for future litigation.

Janet Stotland
Education Law Center

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The ARC of Pennsylvania

Ilene Shane
Pennsylvania Protection & Advocacy

Rachel Mann
Disabilities Law Project

Cc: Dr. Linda Rhen, Chief, Bureau of Special Education
    Ernest Helling, Esq., Acting Chief Counsel
    Karl Girton, Chair, PA State Board of Education
    James Buckheit, Director, State Board of Education