

Quality & Fairness in
Pennsylvania's Public Schools

EDUCATION LAW CENTER

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#2539

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INDEPENDENT REGULATORY
REVIEW COMMISSION

March 27, 2008

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Independent Regulatory Review Commission
333 Market Street, 4th Floor
Harrisburg, PA 17101

RE: IRRC No. 2539, Child Care Facilities
[22 PA Code CHS. 3270, 3290, and 3300]

Dear Mr. Coccodrilli:

I write on behalf of the Education Law Center (ELC) and the Disability Rights Network (DRN) to urge the Commission to approve the above regulations at its April 17, 2008 meeting. ELC is a non-profit legal advocacy organization dedicated to improving educational opportunities and outcomes for children most at risk of school failure, which includes students with disabilities. DRN is the organization designated by the Governor pursuant to the federal Development Disabilities Act to protect and advocate for persons with disabilities. These comments are written from the perspective of their impact on children with disabilities.

The federal Individuals with Disabilities Education Act requires the education system to educate children in the "least restrictive environment." Other federal laws, the Americans with Disabilities Act and §504 of the Rehabilitation Act, also require that persons with disabilities have access to and accommodations in publically funded programs and private programs that qualify as public accommodations. This is the law. Moreover, research and the life experience of families and individuals with disabilities demonstrate conclusively that children with disabilities have the best chance at successful life outcomes if they are consistently included in the life of their communities with needed supports.

Outside their homes and pre-kindergarten programs, child care facilities are the major "inclusive" environment for children with disabilities below school-age. Child care facilities must accept and accommodate these children, work in cooperation with the early intervention system and other child-serving agencies, and welcome to their facilities the specialized staff who sometimes accompany children with significant disabilities and chronic health conditions.

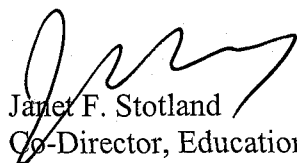
The Department of Public Welfare is taking the right course by eliminating the old Chapter 3300, which imposed unreasonable burdens on any child care provider that accepted a child with a disability (thereby discouraging facilities' acceptance of these children) and instead infusing reasonable obligations into all of the applicable state licensing regulations.

In response to ELC and DRN's concerns, the Department made a number of important changes. While the proposed regulations are not perfect, they go a long way towards ensuring that children with significant disabilities and health conditions are admitted and supported in these facilities.

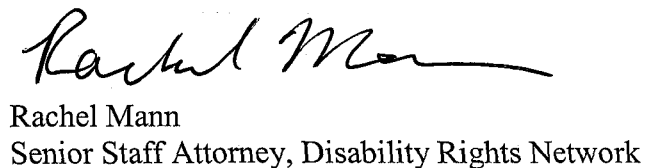
- A child with special needs is defined as a child with a disability or developmental delay identified on an IEP, an IFSP, or a service agreement, or one who has a written behavior plan or a chronic health condition. [§3270.4]
- Facility operators must make reasonable accommodations to accommodate children with special needs in compliance with federal and state laws. [§ 3270.17(a)]
- Facility operators must permit persons who provide specialized services to children with special needs to provide those services on the facility premises in accordance with education and written behavior plans. [§3270.17(b)]
- The Department will provide facility operators with information on community resources for children with special needs, and the operators must make staff and parents aware of community resources. [§3270.17(c)]
- Facility staff may not restrain a child with a mechanical device (other than those prescribed by a medical practitioner for a child with special needs) or enclose a child in a confined space, closet, or a locked room. [§3270.113(e)]
- Facility operators must make reasonable accommodations to facilitate the administration of medication or a special diet if prescribed as treatment for a child's special needs. [§3270.133]

All of these provisions will make it easier and safer for children with special needs to attend child care facilities. We therefore urge the IRRC to adopt these regulations at its April 17, 2008 meeting. Thank you for this opportunity to comment.

Very truly yours,



Janet F. Stotland
Co-Director, Education Law Center



Rachel Mann
Senior Staff Attorney, Disability Rights Network

cc: Jennifer Lau, OCDEL