

**Disability Rights Network
of Pennsylvania**

A merger of PP&A and the
Disabilities Law Project

Protecting and Advancing the Rights of People
with Disabilities

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INDEPENDENT REGULATORY
REVIEW COMMISSION

9:54 Am

May 10, 2008

Mr. Kim Kaufman
Executive Director
PA Independent Regulatory Review Commission
333 Market Street
Harrisburg, PA 17126-0333

**RE: 22 PA Code Chapter 14 (Final Regulation #6-306 (2618): Special
Education Services and Programs**

Dear Mr. Kaufman:

The Disability Rights Network of Pennsylvania (DRN) is the non-profit organization designated by the Commonwealth of Pennsylvania pursuant to federal law to eliminate abuse and protect the rights of adults and children with disabilities statewide. In furtherance of its obligation to promote full and meaningful participation in community life for children with disabilities, DRN is committed to expanding access to quality education, early intervention, and special education services in the most inclusive settings. It is in obeisance to these two mandates, protection from abuse and promotion of community participation, that DRN submits the following comments in support of final form 22 PA Code Chapter 14, Special Education Services and Programs.

As the organization charged with protecting children with disabilities from abuse and neglect, DRN supports the current version of 14.133, Positive Behavior Supports. We applaud the Department and the State Board for its responsiveness to the parent and advocacy community and to the IRRC for revising their earlier proposal. The ban on prone restraints; the clarifying language regarding the IEP Team's critical role in developing a program that ultimately eliminates the need for restraints; the mandate to report restraint use to families and PDE; and the emphasis on the use of positive techniques and interventions, will promote greater protection from abuse and the physical and emotional safety of Pennsylvania's children.

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As the organization charged with promotion of community belonging, DRN acknowledges with gratitude the efforts of the State Board of Education in drafting 14.145 Least Restrictive Environment (LRE). In making placement decisions, school personnel are often unfamiliar with applicable caselaw, in particular the *Oberti* and *Girty* decisions. The Bureau of Special Education has had limited success in LRE enforcement in part because those decisions have not been codified in state regulation. Much of the language in 14.145 is an effective and necessary restatement and emphasis of the federal statutory requirements augmented by the mandates of caselaw in the Third Circuit.

Final form Chapter 14 offers even more improvements to the current regulations: a 60 calendar day evaluation timeline (except for summers); parent access to classrooms; a functional behavioral assessment when youth are referred to law enforcement; and transition planning to begin at age 14. Although not all of DRN's recommendations were accepted, taken collectively this proposal demonstrates that parents and advocates were heard and their experience valued throughout the regulatory process.

Once again, DRN expresses its appreciation for the opportunity to have played a contributing role in the development of Chapter 14 and its confidence that you will approve these regulations.

Sincerely,

A handwritten signature in cursive script that reads "Ilene W. Shane".

Ilene W. Shane, Esq.
Chief Executive Officer