



Delaware County Intermediate Unit

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Christopher W. McGinley, Executive Director

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PA. STATE BOARD
OF EDUCATION

Mr. James Buckheit
State Board of Education, First Floor
333 Market Street
Harrisburg, PA 17126-0333

Mrs. Mollie Phillips
Chair, Chapter 14/16 Committee
State Board of Education
333 Market Street
Harrisburg, PA 17126-0333.

Dear Mr. Buckheit & Mrs. Phillips:

Thank you for the opportunity to provide written testimony on the previous working drafts of Chapter 14. I am sure the process has been arduous, but the final regulations seem truly reflective of the feedback received from the array of stakeholders. DCIU is pleased that the State Board was able to tackle the issues of restraints, caseload, and paraprofessional highly qualified requirements. The language in the final form of Chapter 14 maintains high standards to ensure quality programs while addressing many of the issues posed.

However, at the last moment, the State Board of Education made a change to Section §14.13 on Positive Behavior Support that is vague and will lead to increased litigation for districts and intermediate units as they try to interpret the language's purpose. This will have a major impact on costs. The language in Section §14.13, bullet H, *subsequent to a referral to law enforcement, an updated functional behavior assessment and positive behavior support plan shall be required*, is too broad and unclear. It is difficult to understand the true intent of the State Board of Education.

As you are aware, many schools have cooperative relationships with their local police agencies. These relationships have lead to School Resource Officers having presence, to varying degrees, in schools. These individuals are not employees of the school entity; however, have a duty to intervene when a crime is committed. In such a situation, if a School Resource Officer intervenes in a situation that took place on school grounds and a referral is made to law enforcement for additional follow-up, would the Section §14.13, Part H apply? Although it was not the school entity who made the referral to law enforcement, the current language in Section §14.13, Part H, might lead one to infer this is the intent.

The Pennsylvania legislators have enacted legislation to improve school safety for our youth and adults working in schools. The Safe School Act requires schools to report the discovery of any weapon to

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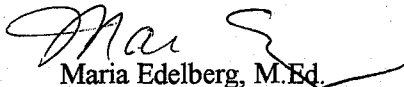
local enforcement. If a student with a disability is discovered bringing a weapon to school and referred to law enforcement, does Section §14.13, Part H apply?

Not all students with disabilities have social, emotional or behavioral needs. Many students who are in need of special education and specially designed instruction only require academic supports and interventions. The language in Section §14.13, Part H states *an updated functional behavior assessment and positive behavior support plan shall be required* after a referral is made to law enforcement. Consequently, if a student's Individualized Education Plan (IEP) had no prior need to address social, emotional, or behavioral issues through the development of a behavior support plan (BSP) or there was never a need to conduct a functional behavioral assessment (FBA), the school entity is not required to perform a FBA or BSP. The language only refers to updating; therefore, one can conclude that this section only applies to students who previously had a FBA and BSP in place.

Furthermore, what are the ramifications if a student whose IEP addressed social, emotional, or behavioral concerns by previously conducting a FBA, and has a current BSP, is referred to law enforcement and is placed for an extended length of time? Depending on the act that resulted in the referral to law enforcement, a student can be placed in a juvenile or adult facility for an unlimited period of time. If a student is unavailable for months, the school entity would be unable to conduct an updated FBA or BSP. What would the implications be for the school entity?

These are only a few snapshots of the ambiguity of the new language. The State Board of Education needs to remove this from the "to be adopted" version of Chapter 14. There are many safeguards in the Individuals with Disabilities Act of 2004 to ensure students with disabilities rights are protected. DCIU urges the State Board to reconsider this last minute revision and remove §14.13, Part H from the regulations.

Sincerely,


Maria Edelberg, M.Ed.
Director, Special Programs

Pc: John Tommasini, Director, Bureau of Special Education
Masako Farrell, Chief, Division of Compliance Monitoring and Planning – East