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Education Service Center  
200 Yale Avenue  
Morton, PA 19070-1918

Phone: 610-938-9000  
Fax: 610-938-9887

Christopher W. McGinley, Executive Director

July 17, 2007

Jim Buckheit  
Executive Director  
State Board of Education  
333 Market Street  
Harrisburg, PA 17126-0333.

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2007 JUL 20 PM 3:01  
INDEPENDENT REGULATORY  
REVENUE COMMISSION

Dear Mr. Buckheit:

The Delaware County Intermediate Unit (DCIU) appreciates the opportunity to provide written testimony on the Proposed Chapter 14 Regulations recently published in the June 30, 2007 edition of the Pennsylvania Bulletin. There are many proposed changes to the regulatory language in Chapter 14. DCIU commends the State Board on several aspects of the new language and supports the State Board as the legislative process moves forward. However, a number of proposed changes cannot be supported. The Legislators and the State Board are strongly urged to re-evaluate their position. DCIU hopes the following feedback is strongly considered and acted upon in reassessing the proposed Chapter 14 regulations. For ease of reading, the information will be presented as it appears in the subsections of the proposed regulations.

#### § 14.102. Purposes.

We support the majority of the newly proposed language. However, it is strongly suggested that language in bullet (a)(1)(iii) is vague and will lead to undue hardship and confusion for all. The current proposed language, *Children with disabilities are educated, to the maximum extent appropriate, with their non-disabled peers and are provided with supplementary aids and service*, should mirror the same language in IDEA 2004. If the State Board and the Legislators adopted this language, the statement would read: *Children with disabilities are educated, to the maximum extent appropriate, with their non-disabled peers; and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily*. This language provides guidance to an IEP team. We believe taking only an excerpt from the IDEA language is misleading and confusing.

#### § 14.104. Educational plans.

DCIU continues to support the need for school entities to provide training activities to parents. This is important and helps to facilitate positive partnerships and provide essential information. However, we suggest the new language in bullet (b)(7) be modified slightly. Currently, the proposed regulations state, *parent training activities provided by the school district*. It is suggested the language read, *parent training activities are coordinated and offered by the school district*. Although the minor change at first might seem inconsequential, it allows for districts to use other entities such as intermediate units, the Local Task Force, colleges and universities to provide a wealth of information and programs to parents. We believe this is the

intent behind the language.

#### § 14.105. Personnel.

The school entity urges the Legislators and the State Board to reconsider their positions on Instructional Support Personnel. Our instructional support personnel serve a vital role in educating children with disabilities. Some individuals possess post-secondary degrees. On the other hand, there are instructional support personnel positions filled by highly competent and qualified individuals who possess a high school diploma. Districts and intermediate units take great pride in providing the necessary trainings to support our paraeducators to effectively and efficiently work with children. If the Legislators and the State Board feel language to address the issue is necessary, we strongly urge the revisiting of this issue under the Educational Plans sections of Chapter 14 or adopting, with modifications, language for paraprofessionals as it appears in the No Child Left Behind Act. Districts and intermediate units support the need for training of our instructional support personnel. We welcome the opportunity to formalize our plans and share this information when we develop our Special Education Plan and submit it to the Pennsylvania Department of Education for approval.

It is important for the Legislators and State Board to fully understand our remarks above. In order to do this, it is essential to review the current proposed language and the comments made in the overview outlining cost estimates. For your reading ease, DCIU has provided the exact excerpts as they appear in the proposed regulations. The current proposed language for personnel appears on page 8 and states:

*(a) An Instructional paraprofessional is a school employee who works under the direction of a certificated staff member to support and assist in providing instructional programs and services to children with disabilities or eligible young children. Instructional paraprofessional personnel hired by a school entity on or after July 1, 2008 shall meet the qualifications outlined in (1) or (2) and (3) or (4). Instructional paraprofessionals who were hired in that role by a school entity before July 1, 2008 shall meet the qualifications outlined in (3) or (4) by July 1, 2010.*

- 1. Have completed at least 2 years of post-secondary study.*
- 2. Possess an Associate Degree or higher.*
- 3. Meet a rigorous standard of quality as demonstrated through a formal state or local academic assessment of knowledge in and ability to assist in instruction in reading, writing and mathematics.*
- 4. Meet a rigorous standard of quality as demonstrated through a formal state or local academic assessment of knowledge of, and the ability to assist in instruction, reading readiness, writing readiness, and mathematics readiness, as appropriate.*

*(b) Nothing in subsection (a) should be construed to supersede the terms of a collective bargaining agreement in effect upon the effective date of subsection (a).*

In addition, language in the Proposed Rulemaking, section *Cost and Paperwork Estimate*, states:

*The proposed rulemaking will not result in significant added costs or savings to either the Department or school entities since it reflects existing Federal or State requirements, judicial rulings or settlement agreements.*

*The most significant potential cost factor is that of establishing minimum requirements on the qualifications of instructional paraprofessionals who provide support to a student with disabilities under the direction of a classroom teacher in §14.105. Instructional paraprofessionals hired before July 1, 2008, shall demonstrate knowledge in and ability to assist in instruction in reading, writing and mathematics or readiness in these disciplines through a rigorous State or local academic assessment. Instructional paraprofessionals hired after July 1, 2008, need to meet the same requirement in addition to either having an associate's degree or higher or completed 2 years of postsecondary study.*

*Similar requirements have been in place under the Federal No Child Left Behind Act of 2001 (NCLB) (Pub. L. No. 107--110, 115 Stat. 1425) for instructional paraprofessionals employed in schools receiving Title I funds and under Chapter 4 for paraprofessionals working in prekindergarten programs. Since the testing program already exists to address the NCLB requirements, costs associated with the testing program are limited to staff time and test administration. With respect to the requirement that newly hired paraprofessionals have 2 or more years of postsecondary education this requirement may require school entities to conduct increased recruitment efforts to meet this requirement. The Board believes the benefits of staff with greater levels of education far outweigh any potential minimal cost for school entities to conduct expanded outreach and recruitment of staff.*

Let us review the proposed paraprofessional qualifications and the State Board's comments. First the State Board indicates there are similar requirements currently in place under NCLB for instructional paraprofessionals receiving Title I funds and it reflects existing Federal or State requirements, judicial rulings or settlement agreements. It is important to stress this is a misleading statement since what is being proposed in Chapter 14 is far more restrictive and demanding and does not exist, as being proposed, in current laws or regulations or by judicial rulings or settlement agreements. NCLB requires local education agencies to ensure that paraprofessionals employed in programs supported with Title I, Part A funds, shall have: (1) Completed at least two years of study at an institution of higher education, or obtained an associate's (or higher) degree; **OR** (2) met a rigorous standard of quality and can demonstrate, through a formal state or local academic assessment, knowledge of, and the ability to assist in instructing reading, writing, and mathematics (or readiness in those subject areas). Chapter 14 eliminates a school entities flexibility of options to meet a highly qualified status with instructional paraprofessionals. It mandates an individual has an associates degree or two years of post secondary study **AND** meet a rigorous standard of quality as demonstrated through a formal state or local academic assessment of knowledge in and ability to assist in instruction in reading, writing and mathematics or to assist in instruction, reading readiness, writing readiness, and mathematics readiness, as appropriate. This standard will place districts and intermediate units in a position where we will be unable to fulfill current requirements outlined in Individualized Education Plans and implement the supplementary aids and services, creating a crisis. Additionally, this new requirement will be an impediment to hiring future instructional support personnel, resulting in devastating consequences for our children.

Furthermore, it is crucial to review the comments contained in the cost overview pertaining to instructional paraprofessionals. The State Board believes the *"the proposed rulemaking will not result in significant added costs or savings to either the Department or school entities since it reflects existing Federal or State requirements, judicial rulings or settlement agreements... and costs associated with the testing program are limited to staff time and test administration"*. This statement is **false!** **These regulations will result in a significant fiscal impact to schools requiring more funding from the Department of Education or increased property taxes to Pennsylvania residents to support the mandate.** Currently, DCIU employs 157.5 paraprofessionals (132.5 in school-age programming and 25 in early intervention programs) at an annual cost of \$2,562,000 for salaries alone. DCIU requires the employee to have a minimum of a high school diploma, and the organization's starting salary for such a position is \$14, 811.00. We institute an array of training programs for our staff in addition to mentoring all new employees. If the new regulations are adopted without modification, our starting salary would **have to increase** if DCIU is going to be able to fill any vacancies. If the organization only increased the starting salary by \$5,000, it would increase DCIU's costs by \$787,000 annually. This is **SIGNIFICANT**. These numbers do not include one-on-one paraprofessionals who work with individual children as per their individualized education plans. If we included these individuals, DCIU would increase our paraprofessional numbers by at least 25. It is also essential to point out that no where in the regulations does it specify one-on-one paraprofessional support personnel or personal care assistants are exempt from the requirements of this subsection.

We strongly urge the Legislators and the State Board to reconsider the proposed language in section §14.105 Personnel. If your intent is to establish requirements for instructional paraprofessionals, DCIU urges you to adopt the current standard outlined in NCLB. We further request written clarification of qualifications for paraprofessionals who work with children who are assessed using the Pennsylvania Alternative System of Assessment (PASA). It is our belief paraprofessionals serving in this role require training and inservicing but should be exempt from the mandates established by NCLB and Chapter 14. Paraprofessionals working with students who take the PASA are working with the most significantly impaired children in Pennsylvania, whose individualized education plan outlines goals and objectives focusing on the ability to improve basic activities of daily living skills such as feeding, toileting, sustaining attention for a few minutes, and the development of primary level social skills. Lastly, it is important to exempt personal care assistants from this requirement. According to Dr. Rhen, the intent of this language was not to require these individuals to meet the requirements outlined in this chapter. However, if the regulations do not specify this, we are concerned the regulations will be misinterpreted and lead to unwarranted due process claims and lawsuits.

**(c) Caseload for professional personnel.**

We praised the State Board for tackling this very difficult issue when the Working Draft of Chapter 14 was published. At that time, there was a need for clarification of the terminology to try and avoid future confusion. The State Board attempted to clarify language by adding a new definitions section to the regulations. Unfortunately, the State Board also added an additional level, Level IV, to the Proposed Regulations. This new level will have devastating fiscal consequences on schools. The following DCIU data provides the fiscal impact this new level will have on the intermediate unit and school districts.

For clarity of understanding, it is important to recognize what guidelines school districts and intermediate units are currently obligated to follow. At this time, section §14.142 (caseload for special education) outlines the maximum caseloads for full-time status students. The following table highlights this information:

Full-time Level of Support	Full-Time Maximum Caseload Allowed On A Single Teacher's Roll
Learning Support	12
Life Skills Support	12 Elementary 15 Secondary
Emotional Support	12
Deaf & Hearing Impaired Support	8
Blind or Visually Impaired Support	12
Speech & Language Support	8
Physical Support	12
Autistic Support	8
Multiple Disabilities Support	8

Full-time support's definition is equivalent to the current proposed language in section §14.105 (c)(1) Level IV. Level IV outlines services which include replacement services for more than 75% of the instructional day and may also include case management and supplemental services. A teacher's caseload maximum for this level is proposed to be 8 students. When converting teachers' caseloads from current regulations to the proposed caseloads, DCIU would need to **add an additional 13 teachers and 13 instructional paraprofessionals to meet the new requirement**. These additional staff are due to the decrease in caseloads for students who are currently receiving full-time level supports in the areas of learning, emotional, physical, and life skills domains. Additionally, **13 classroom spaces will be required to run the programs. *Fiscally, this increases the budget by \$1,300,000.00 dollars for salaries and benefits and \$175,500.00 for 13 additional classroom spaces. This totals an overall increase of \$1,475,500.00.*** It is important to note the increase in classroom spaces will be difficult to obtain due to many school buildings already filled to capacity.

We supported the previous working draft of the language indicating three levels of support with their proposed caseload requirements. The working draft language can be easily used again in the proposed language. It would state:

i. **Level 1 supports** – Services may include one or any combination of the following services: Case Management; Supplemental Services; and Replacement Services up to 20% of the instructional day.

**Caseload Maximum Number = 50**

ii. **Level 2 supports** – Services must include Replacement Services 21% to 50% of the instructional day and may also include Case Management and Supplemental Services.

**Caseload Maximum Number = 25**

iii. **Level 3 supports**– Services must include Replacement Services more than 51% of the instructional day and may also include Case Management and Supplemental Services

**Caseload Maximum Number = 8 to 15**

We strongly urge legislators and members of the State Board to reconsider their position on the levels and corresponding caseloads. **WITHOUT REVAMPING THE LANGUAGE, TAXPAYERS WILL INHERIT THE FISCAL BURDEN PLACED ON SCHOOLS BY YOUR ACTIONS IN APPROVING THIS MANDATE.**

## § 14.108 Access to Classrooms.

We support parents and work collaboratively and cooperatively to provide them with opportunities to visit classrooms. However, it is our belief the proposed language in section 14.108 borders on the violation of other children's right which are protected under the Family Rights and Privacy Act of 1974 (FERPA). Therefore, we recommend the language be removed.

## a§ 14.123. Evaluation.

We commend the State Board for keeping current language maintaining sixty school days for a multi-disciplinary evaluation. This timeline is critical for educational evaluation teams to have the opportunity to implement and monitor intervention strategies, collect data to make informed decisions, conduct the necessary assessments, and to ensure all aspects of the evaluation will be in compliance. We are deeply concerned with one section of the language in bullet (c): *Parents may request an evaluation at any time and the request shall be in writing. The school entity shall have readily available for such purpose an evaluation request form and if a request is made orally to any professional employee or administrator of the school entity, that individual shall provide a copy of the evaluation request form to the parents within five school days of the oral request.* If the phrase, *if a request is made orally to any professional employee*, is not removed, school entities will find themselves defending child find claims due to the proposed language being too broad and unrealistic to implement. In schools today, there are many professional employees who are not a school district or intermediate unit employee. They work in schools as part of behavioral health support plans for individual or groups of students and there are contracted personnel to fill a unique and specific vacancy. It is impossible to implement the language proposed. We propose this phrase be deleted from the bullet.

## 14.133. Behavior support.

We comment the State Board on tackling this issue since the Working Draft of Chapter 14 regulations were published. The current proposed language is supported and will continue to provide quality services to children.

## §14.145. LRE Requirements.

School entities suggest the State Board adopt the language in IDEA 2004 defining the Least Restrictive Environment [Sections 300.114, 300.115, 300.116 and 300.117]. This action would modify only one word in bullets (a)(1) and (a)(2). The language would read:

*(1) To the maximum extent APPROPRIATE and as provided in the IEP, the student with a disability is educated with students who are not disabled;* rather than *(1) To the maximum extent and as provided in the IEP, the student with a disability is educated with students who are not disabled; and*

*(2) Special classes, separate schooling or other removal of a student with a disability from the REGULAR EDUCATION ENVIRONMENT when the nature of severity of the disability is such that education in the regular education class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily;* rather than *(2) Special classes, separate schooling or other removal of a student with a disability from the regular education class when the nature of severity of the disability is such that education in the regular education class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily.*

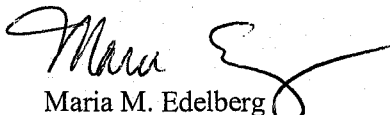
Although the above changes might seem, at first glance, to be inconsequential, they are significant to the meaning behind the intent of the federal legislation. In bullet 1, leaving out the term appropriate provides no guidance and communicates at all costs regardless of the suitability. This is not what we believe the State Board intended to mandate. We also believe that using the term regular education environment in the beginning of bullet 2 allows more opportunities for students with disabilities rather than narrowing it the regular education classroom.

The proposed language in (a)(3) and (a)(4) is too broad, vast, and more restrictive than current

federal regulation and interpretations from case law. If this language remains, it will create undue fiscal hardships for school entities. We propose Chapter 14 adopt verbatim IDEA 2004 regulations for Least Restrictive Environment. It is recommended these bullets be deleted.

Lastly, we ask the Legislators and the State Board to ensure Chapter 14 regulations apply to all schools, except Charter schools, that receive state funding for special education programming. This would ensure that approved private schools, which are supported with state and district dollars, are held to the same standards. This is best for all children and ensures these programs operate in a compliant manner. Thank you for the opportunity to provide written testimony of the proposed regulations of Chapter 14.

Sincerely,

  
Maria M. Edelberg  
Director, Special Programs

CC: Senator James J. Rhoades, Chair, Senate Education Committee  
Representative James R. Roebuck, Jr., House Education Committee  
Senator Dominic Pileggi  
Dr. Gerald Zahorchak, Secretary of Education  
Mr. John Tomasinni, Bureau Director, Special Education  
Mrs. Mollie Phillips, Chair, Chapter 14/16 Committee, State Board of Education  
Dr. Linda Rhen, Special Advisor, State Board of Education  
Mrs. Adriene Irving, Director, Legislative and Community Services