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July 19, 2007

TO: James Buckheit, Executive Director of Pennsylvania Board of Education

FROM: M. Christopher Tabakin on behalf of Melmark's Approved Private School

RE: Considerations for proposed 22 PA Code Chapter 14, Special Education Services and Programs Regulations

On behalf of Melmark, a private nonprofit organization operating an Approved Private School in Pennsylvania, thank you for providing the second opportunity to respond to the proposed regulations of Chapter 14. Melmark is one of 30 not-for-profit organizations licensed by the State Board of Private Academic Schools and approved by the Pennsylvania Department of Special Education. Melmark is a member of the Alliance of Approved Private Schools, National Association of Private Special Education Centers (NAPSEC), and Council for Exceptional Children, of which I am board member of Pennsylvania's Association. Melmark provides services to students with a wide range of disabilities including autism spectrum disorders, acquired brain injuries, behavior disorders, mental retardation, physical disabilities, and multiple medical needs among others. The population served is severely and profoundly impacted by their disability, and require services in the private school setting as the least restrictive environment. Many students served not only face educational needs, but also concurrent severe behavior disorders and/or physical disabilities impacting their ability to learn and make progress. Through intense specialized programming, Approved Private Schools are able to help students make progress and hopefully return to their home district and public school setting, or pursue post secondary education, a vocational career, or adult programmed services in

the future. We provide serves in accordance with Pennsylvania educational regulations and the Individuals with Disabilities Education Act (IDEA).

Melmark has evaluated proposed Chapter 14 regulations posted in the PA Bulletin. The proposed regulations include some positive suggested revisions including the addition of language related to positive behavior supports, ban on the use of prone (face down) restraints except where necessary based on medical recommendation, guidance for obtaining parental consent, direction on the use of restraints for safety, and most importantly explaining IEP meeting requirements specifying that if a restrictive technique is already part of the current IEP and appropriate, that a meeting is not required each time restrictive technique is needed. We had worked with Dr. Linda Rhen, Special Assistant to the Secretary of Department of Education, throughout the process providing suggested language for the regulations. I am very pleased to see that some of the suggested language has been included in this proposal. However, some language and proposed changes are still of concern in the proposed regulations. We respectfully submit the following positions and bring to the attention of the Board of Education, the following concerns for your review:

Chapter 14.133 Behavior Support

The first area still of concern is related to the reporting of data for restraint use. As stated during the previous review process, Melmark is neither advocating for, nor against reporting of restraint data as a general practice. However, the format, specific expectation, and methodology for reporting needs to be clarified. Due to the vague manner in which the proposed regulations reference the reporting requirements, we are unable to support this specific provision and must recommend that it either be deleted, or revised to include a simple explicit method and expectation for reporting that does not create increased paperwork or undue burden. For example, the number of restraints used for the year could be recorded on the IEP and internal tracking systems left to individual schools to determine. This would allow for all data to be entered into the Penn Data system since all IEP's are provided to the district, including from Approved Private and Charter schools. It is of importance that these data are used for the State Board of Education and Pennsylvania Department of Education only, for monitoring purposes, and/or evaluation of trends for possible determinations of best practices, and that these data would not be reported to the general public. It is noted that if these data were to be reported in the absence of an explanation surrounding its meaning, and the differences between settings (public and Approved Private School for example), that this may result in stigmatizing schools that require these interventions more frequently due to the primary population they serve. This would be demoralizing to the staff whose sole purpose is to safely educate and better serve students who have not been able to be effectively served by their Local Education Agencies (LEAs). This could be damaging to the entire APS service delivery system.

The second area of concern relates to student injuries requiring treatment by "medical personnel" and the proposed need for a subsequent IEP meeting. Though we agree that any injury to a student, or anyone else, is serious and needs to be addressed, our specific concern is related to the proposal to reconvene the IEP team for each occurrence of an injury that requires treatment by undefined "medical personnel."

Compounding this issue is that "injury" is a broad term. As stated during the previous review process, the term injury needs to be more clearly defined, which would address the concern of the ambiguous term "medical personnel." If the implication is that any time a student engages in self-injurious behaviors for example, causing a superficial mark, which a school nurse evaluates and treats with basic first aide, requires an IEP team meeting, the burden would be overwhelming for many Approved Private Schools. Naturally, many Approved Private Schools serve students who present challenging behaviors where it is more likely that these types of "injuries" will occur more frequently than in the public schools. Furthermore, in a vast majority of occurrences, these "injuries" are minor and do not require treatment beyond first aid. It is recommended that the term "medical personnel" be removed and the following definition used related to injury:

"A non-accidental injury requiring treatment above or beyond standard first aid."

This definition is more objective, and will provide more clear guidelines than what is currently proposed. The term "above or beyond first aid" is used in a Pennsylvania Department of Public Welfare Mental Retardation Bulletin, 6000-04-01 related to "Incident Management." This term would clarify that just because a school nurse evaluates a minor injury and provides minimal care as a precaution, that an IEP team meeting does not need to be called. The term "medical personnel" as written would seem to include a school nurse. This concern may also influence personnel in public schools where teachers might attempt to "treat" injuries themselves in order to avoid the IEP requirement, and not send a student to the nurse when needed. Of course parents should be notified for any such injury, or even more minor injuries as they request.

Due to the population served by Approved Private Schools, it is recommended that they be excluded from this requirement, as it would place an undue burden on the schools as the result of the proportionally higher number of students with behaviors that cause minor injuries of an intentional nature. Oversight and review processes are already built into the practices of many Approved Private Schools and pertinent outcomes of the review are communicated to families and other members of the team as needed. It is recommended that the following phrase be added for the exclusion:

"This IEP team meeting process does not apply to Approved Private Schools. Approved Private Schools may develop a review process for non-accidental injuries requiring treatment above or beyond first aid."

If this language is unacceptable, it is recommended that this section be changed to state the following as a minimum requirement related to the Approved Private Schools:

"Injuries requiring treatment above or beyond standard first aid that occur as the result of self-injurious behavior or a non-accidental act by another student, shall prompt a review within 15 school days for the student injuring themselves or another student. Any recommended changes or determinations should be communicated at least to the student's family as needed and then to the rest of the IEP team as needed. A family member, member of the student's IEP team, or review team member shall be able to

request an IEP meeting as the result of an injury requiring treatment above or beyond first aid.”

On behalf of Melmark, it's students, and it's staff, we thank you for your time and thorough attention to the recommendations. Of course, without specific language provided for review in the proposal, it is difficult to truly analyze and provide specific revisions or recommendations as had been done previously with the proposed regulations. Melmark would be pleased to continue to offer additional assistance in the form of information or specific language recommendations for the Board or Department. Please feel free to contact us at any time. We appreciate your ongoing commitment to students with disabilities and your interest in not only maintaining compliance with federal requirements, but also improving the education system in Pennsylvania.

Sincerely,

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