



# COMMUNITY JUSTICE PROJECT

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July 25, 2007

2618

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

RE: Proposed 22 PA Code Chapter 14

Dear Mr. Buckheit:

The Community Justice Project is a non-profit public interest law firm, working to protect and further the civil rights of low-income people throughout the state. We frequently represent special education students and their parents in educational matters. We appreciate the opportunity to comment on the proposed changes to Chapter 14. Our comments are as follows:

### 1) THE PROPOSED RESTRAINT POLICY IS FLAWED.

We are greatly concerned with the proposed changes in restraint policy reflected in the recently published Chapter 14 amendments. We believe that these changes are impractical to implement and will encourage the use of unreported, but nevertheless damaging, restraints.

#### a) The less-than-30-second duration exemption is not practicable.

Many special education students have communication difficulties which prevent accurate reporting of events which occur at school, making these students especially vulnerable to techniques and tactics which may cause them emotional or physical harm but are not required to be reported by professionals in their classroom. Of particular concern, therefore, is §14.133(b)(i) which defines "restraints" as devices and techniques "that last longer than 30 consecutive seconds." This provision exempts from reporting requirements restraint procedures of short duration—no matter how violent.

Precise timekeeping is unlikely in the crisis situations that require restraints. Moreover, the regulation is unclear whether the 30 seconds applies to the time required to bring the child into the restraint position. In our experience, the "takedown" component of restraint, where the restrainer applies force to the

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understandably afraid and angry child, can cause significant damage to children before the 30 seconds may even have started. Therefore, we concur with the VALUE Coalition that the 30 second minimum just won't work and strongly suggest eliminating it.

b) Immediate notice to parents after restraint should be required.

In our experience, restraint can dramatically escalate a child's disruptive behavior, as the child processes through the shame and self-suppression resulting from the public restraint. Informing the parents of the restraint allows them to help their child work through the problems in a quick, peaceful, and effective way. Accordingly, we recommend that the Board incorporate language from the Department of Public Welfare's April 17, 2006 Draft Regulations for Residential Treatment Facilities, here section (K) of "Restrictive Procedures", in turn based on Pennsylvania CASSP principles generally and Principles of Cultural Competence, into §14.133(c): **The school entity must notify the parent(s) or legal guardian(s) of the student who has been restrained as soon as possible, and in no event more than 24 hours after the initiation of restraint. The school entity must document in the student's record that the parent(s) or legal guardian(s) has been notified of the restraint, including the date and time of notification and the name of the staff person providing the notification.**

c) IEP meetings are necessary soon after restraint.

On a similar note, we believe that IEP team meetings are necessary when such situations occur, to ensure the continued appropriateness of the IEP and make certain that the parents are drawn into the process of understanding and intervening in the behavior which prompted restraint. We concur with the VALUE Coalition that IEP meetings should be presumed necessary, unless waived in writing by the parents. If upon receiving written notice of the situation the parents feel an IEP meeting is unnecessary, allowing them to waive it in writing improves efficiency.

d) Prone restraints should be forbidden.

We strongly encourage the complete prohibition of prone restraints, which have sometimes resulted in the death of children. Moreover, although the proposed regulation calls for specific authorization for prone restraints to be included in the IEP, such restraints will undoubtedly be applied where authorization is missing when teachers in stressed situations are forced to make snap decisions. Our experience with special-education teachers "in the trenches" indicates that they

will not know the IEP of every child they teach by heart. Rather, they will go with their recollection as to who can restrain whom, prone or otherwise. Restraints, as a rule, are used in stress situations where memories may be less accurate than otherwise: inevitably, some restrainer will mix up a child that can be restrained in prone position with one who cannot.

e) Persons employing restraints need rigorous training.

Face down prone restraints are particularly dangerous, but all restraints have the potential to harm children being restrained and to teach them and their classmates that physical force is an acceptable means to resolve conflict. Because any restraint can have these outcomes, we believe that the restrainers need to be rigorously trained to avoid using of force if possible. Recognizing the potential for harm which restraints present, we would urge the Board to borrow from the Department of Public Welfare regulations, based on Pennsylvania CASSP's Principles of Cultural Competency. We believe that clause (A) of "Staff Education and Training on the Use of Restraints" should be incorporated into §14.133(c), as part of the overarching objective to reduce restraint use:

**---Staff authorized to implement restraints must have training, continuing education, and demonstrated knowledge of:**

- a) Techniques to identify staff and student behaviors, events, and environmental factors that may trigger emergency safety situations;**
- b) The use of nonphysical intervention skills, such as de-escalation, mediation conflict resolution, active listening, and verbal and observational methods, to prevent emergency safety situations; and**
- c) The safe use of restraint, including the ability to recognize and respond to signs of physical distress in students who are restrained.**

Finally, we would also like to add our voice to commentary on other proposed changes. These primarily cover dispute resolution, though we also feel strongly about ESY for young children.

## 2) ESY STANDARDS

Regarding ESY services, we note that early intervention can greatly facilitate skill development and retention, especially for autistic children. We agree with the Education Law Center that the same standards used for determining ESY for school-age children should, where available, be used for preschoolers. Amending §14.132(a) could easily achieve this goal: **...school entities must use**

**the following standards for determining whether a student with disabilities and an eligible young child requires ESY as part of the student's program.**

### 3) DISPUTE RESOLUTION PROCEDURES

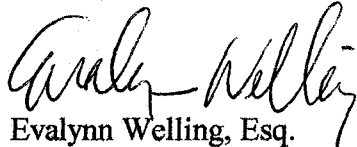
Special-education students are generally aware of the process surrounding them. When parents and school officials disagree on IEP standards, this inevitably hampers the student's ability to learn and may exacerbate certain disabilities. Accordingly, we should give parents and school entities every opportunity to peaceably work out their problems. We therefore recommend retaining §14.161, allowing parents to arrange a conference prior to beginning the costly hearing process.

We agree with the Education Law Center that mediation and other peaceable dispute resolutions should be enforceable by DOC. Our experience with low-income families indicates that resort to the court system is financially prohibitive and takes valuable time away from children who can hardly afford to wait several more months for their free appropriate public education. Similarly, statutes of limitation for either process should be equal and set at two years, to allow families some time to get their paperwork together while minimizing confusion.

### 4) SCHOOL RECORDS

Some parents lack the time and resources to copy their children's records prior to important functions such as IEP meetings. We concur with the Education Law Center's recommendation that parents be provided a free copy of their child's school record before educationally crucial events.

Thank you for your consideration of these matters,



Evalynn Welling, Esq.



Christopher Strayer, Legal Intern

COMMUNITY JUSTICE PROJECT  
Pittsburgh Office

cc: Arthur Coccodrilli, Chair, Independent Regulatory Review Commission  
The Honorable James J. Rhoades, Senate Education Committee  
The Honorable Jeffrey E. Piccola, Senate Education Committee  
The Honorable James R. Roebuck, Jr., House Education Committee

The Honorable Jess M. Stairs, House Education Committee  
The Honorable Dennis O'Brien, Speaker, House of Representatives  
The Honorable Barbara McIlvaine Smith, Chair, Subcommittee on Special  
Education