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July 26, 2007

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

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PA. STATE BOARD  
OF EDUCATION

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

Subject: Special Education Services and Programs, Chapter 14 Proposed  
Comments/Position Paper of LDAPA

Dear Mr. Buckheit:

On behalf of the Learning Disabilities Association of Pennsylvania, we thank you for this opportunity to present our comments regarding the proposed revisions to 22 Pa. Code, Chapter 14. LDAPA is the only recognized non-profit organization representing the interests of those children and families affected by learning disabilities in the state. Without question, our children represent the largest segment of students being served by special education programs and we advocate for their needs in this matter.

We have participated in roundtable discussions, public meetings and provided previous comments regarding our concerns and support of positive language in the proposed version of Chapter 14. While we support maintaining transition planning at age 14 in contrast to the federal law, we find other sections problematic as they do not provide adequate language to ensure a free appropriate public education.

Specifically, the section on Least Restrictive Environment is excessively loose and lacking adequate language from IDEA. LDAPA fully supports LRE, however, there must be appropriate placement and meaningful educational benefit for individual students. "One size fits all" education is totally unacceptable and in violation of FAPE.

Attached are LDAPA's comments in the form of a Position Paper on the Proposed Chapter 14. Those areas of greatest concern are itemized below:

- Child Find - §14.121
- Screening - §14.122
- Response to Intervention (RTI)
- Evaluation - §14.123
- Criteria for Determination of Specific Learning Disability - §14.125
- Caseload for Special Education - §14.142
- Least Restrictive Environment (LRE) - §14.145
- Elimination of Prehearing Conference in Due Process - §14.161

Mr. James Buckheit

July 26, 2007

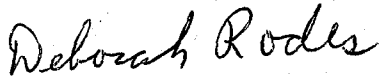
We appreciate this opportunity to present our issues of concern and thank you for your thoughtful consideration. If we may provide additional information or discussion, we would be happy to assist both the State Board and IRRC in any way that would be helpful in this matter.

We fully understand the magnitude and seriousness of this endeavor and support your efforts on behalf of those students with specific learning disabilities and their families.

Very truly yours,



Sharyn Denham  
On behalf of LDAPA



Deborah Rodes, President  
Learning Disabilities Association of PA

Attachment

cc: Arthur Coccodrilli, Chair, IRRC  
Senator James J. Rhoades, Senate Education Committee  
Senator Jeffrey E. Piccola, Senate Education Committee  
Representative James R. Roebuck, Jr., House Education Committee  
Representative Jess M. Stairs, House Education Committee  
Representative Dennis O'Brien, Speaker, House of Representatives  
Representative Barbara McIlvaine Smith, Chair, Subcommittee on Special Education  
Representative Kathy Rapp, Subcommittee on Special Education  
Dr. Linda Rhen, PDE Special Assistant, Chapter 14

**LEARNING DISABILITIES ASSOCIATION OF PENNSYLVANIA  
COMMENTS AND POSITION REGARDING PROPOSED CHAPTER 14**

The Learning Disabilities Association has a long history in Pennsylvania. Our national organization was chartered in 1964 and headquarters was established in Pittsburgh in 1973. The function of our non-profit association is to serve students, families, concerned professionals and adults with specific learning disabilities by providing information and advocating for effective educational instruction and services to maximize the potential of those impacted by specific learning disabilities (SLD).

PDE's most recent Special Education Data Facts 2005-06 indicates that 68,410 students or 53.92% of the total amount of students with disabilities were identified as SLD. This overwhelming number clearly reflects the critical need to identify students as early and effectively as possible. Those early services must have a seamless transition from early intervention or pre-school into public school programs without undue delays in accurate identification that negates remediation that has been achieved.

**§14.121 - Child find**

As previously stated, the earlier a child's specific learning disability (SLD) is identified and appropriate instruction is developed, the more likely individual remediation can be successfully achieved. It is essential that parents be notified at the earliest sign of learning difficulty and made fully aware of intervention strategies as well as the full continuum of educational options. Students floundering for years and experiencing failure and grade retention are not receiving a free appropriate education. Repeated frustration and failure only leads to increased dropout rates that serve neither the student nor taxpayers.

**§14.122 – Screening**

If a child is not making adequate academic progress and is determined to be 'at risk,' early parental notification must be given and rights clearly explained. Those students entering RTI may achieve some progress initially but still not be able to sustain the incremental gains over a period of time. How long will students remain in this screening process before an evaluation is done to determine their individual needs? In Pennsylvania there will be 501 different methods used to implement RTI and there are many variations available. However, there is no "Quality Control" measure to protect those students with undiagnosed SLD who require evaluation and specially designed instruction to succeed.

**Response to Intervention (RTI)**

RTI is a general education initiative utilized as a method of early intervention for students experiencing academic difficulties. LDAPA supports interventions at the earliest sign of learning difficulties and the use of high-quality, scientific research-based interventions along with continuous monitoring. LDAPA believes RTI shows promise if it is utilized as one component in the identification process but not as the sole criteria for determining if

an evaluation is warranted. This could reduce the number of misdiagnosed students who may appear disabled but have not received appropriate instruction for their learning style. However, LDAPA cannot support the practice and abuse of multiple tiers (more than two) that results in students languishing for an indefinite period of time in RTI prior to providing a comprehensive evaluation to determine if a child is eligible. Timelines must be included in the RTI process to ensure the student is not subjected to unnecessary delays before specialized instruction and IDEA protection is provided.

LDAPA recognizes the challenge in implementing RTI as a statewide initiative and the training and expense 501 school districts will incur. This includes costs for training general education personnel who will be responsible for implementation in regular classrooms and research-based materials. Whereas there is much scientific evidence to help educators with the instruction of early reading skills, there is much less available to address reading comprehension. Also, there could be difficulty in obtaining research-based information to guide instruction in math, spelling, and writing and in content areas such as science and history. Guidelines need to be developed to assist school entities with the implementation of RTI and to enforce delivery of a free appropriate public education.

The RTI pilot programs currently being showcased by PDE, as presented at the Annual Conference on March 29, 2007, vary dramatically and quality of instruction and end results will also reflect the differing perspectives of the administrators executing the program. While one district focused on early remediation in reading and reinforcing skills, another saw RTI as a "replacement" for Special Education. We firmly believe a strong foundation must be in place before successful implementation can be achieved. Without such a foundation, it is unlikely to expect new programs will be successful.

Furthermore, RTI has not proven to be effective in meeting the needs of students with SLD. Leading research in the field has failed to provide evidence that RTI strengthened student academic achievement or classroom behavior. Furthermore, questions arose regarding the overall fidelity of the implementation as reported in Learning Disabilities Research and Practice, 18 (c), 157-171, Council for Exceptional Children, 2003 – *Responsiveness-To-Intervention: Definitions, Evidence and Implementation for Learning Disabilities Construct*, Donald Fuchs, Devery Mock & Paul L. Morgan & Carese Young. What oversight will be established to ensure proper standards for assessing the effectiveness of RTI in 501 school districts and enforcing accountability and compliance for these programs?

#### **§14.123 – Evaluation**

While specific learning disabilities are not synonymous with difficulty in acquiring reading skills, it is an early indicator of students at risk of SLD. As defined in No Child Left Behind, reading means a complex system of deriving meaning from print that requires phonemic awareness, decoding ability, reading fluency, vocabulary and comprehension. The requirements for screening children in NCLB, 20 USC 6301, dovetails with IDEA in requiring an assessment to identify children at high risk for developmental delay or academic failure in need of further diagnosis for special services.

LDAPA cannot support the extended timeline of 60 school days rather than 60 calendar days between the request for an initial evaluation and completion of the report. With the use of RTI as a prescreening tool continuing for 60 school days, plus the additional delay of another 60 school days before an evaluation is completed following RTI, a child could wait for a total of 120 school days. That could be a delay of almost a full school year and puts unacceptable pressure on a student with specific learning disabilities. It fails to meet the requirements of Child Find in IDEA. This is not in keeping with the concept of early intervention and clearly denies FAPE.

As established by law, no single measure or assessment may be used as the sole criteria for determining whether a student is a child with a disability and for determining an appropriate education program. The process must include parents and professionals and the determination must be a collaborative one based on assessment, observation and intervention strategies such as RTI. Those responsible for the evaluation and the appropriate LEA representative must be part of the team when determining the educational needs of an eligible student.

#### **§14.125 Criteria for the Determination of Specific Learning Disabilities**

LDAPA is very concerned that there is no definition of SLD in Chapter 14 and this is a serious oversight. One cannot establish criteria for the determination of SLD without defining the disorder in accordance with 34 CFR 300.7(b)(10). Specific learning disabilities are neurologically based, intrinsic to the individual and are characterized by intra-individual differences, including cognitive variations that affect learning and require specialized instruction, accommodations, modifications and other supports. It is critical that students suspected of having SLD receive accurate, timely diagnosis and specially designed instruction to meet their individual needs.

Students exhibiting early indicators of SLD routinely demonstrate signs of dyslexia and/or related disorders when reading instruction is initiated. We believe that §14.125(1)(iv) Basic reading skill should include the essential components of reading instruction (as defined in §1208(3) of the Elementary and Secondary Education Act).

Additionally, there is a direct correlation between SLD and children exhibiting oral expression difficulties. Children receiving Speech and Language Services through Early Intervention and/or in kindergarten should be determined to be at high risk and have an expedited evaluation rather than being placed in an RTI program.

Finally, there is no assurance of parental notification or requirement to provide parents with their legal rights for any child suspected of having a specific learning disability. This is an unconscionable omission and totally unacceptable. It is also interesting to note that no other disability group is being reviewed in the proposed Chapter 14 regulations and that SLD represents the greatest number of students served. While LDAPA appreciates SLD is a complex and varied disorder, it is lifelong and no less detrimental to the educational future of those children impacted.

#### **§14.142 Caseload for Special Education**

It is our understanding that this section is being revisited and, at this time, there is no formal proposal on which to comment. However, LDAPA strongly believes that no increase in caseload should be considered. Furthermore, it is our position that a reduction in caseload is more appropriate to achieve FAPE.

If anything, the new levels of support and formula to determine caseload can be more readily utilized to increase the number of students assigned to individual teachers. This will have a negative impact on effective student learning and teacher morale. Teachers are already stretched to their limit and to increase the burden with additional students and paperwork is simply unacceptable.

Based on past experience with the present caseload, the number of students identified as SLD is increasing but graduation rates are not. The graduation rate as presented by PDE is misleading in that it includes not only students receiving a diploma but also those who leave school as dropouts, who receive a certificate of attendance, have reached the age of maturity (21) and even includes students who have died. How will the proposed new levels work more effectively in meeting the individual needs of students with SLD?

#### **§14.145 LRE Requirements**

The proposed language in Chapter 14 represents a clear violation of student rights to FAPE. LDAPA fully supports the "appropriate" education of all students to the maximum extent in general education but not mandated assignment in an environment that is not beneficial to the child's education. Students must be monitored and assessed to determine if there is measurable achievement to demonstrate "meaningful educational benefit" from placement in an "inclusive" environment. If not, the child is being denied a free appropriate public education in direct opposition to IDEA.

LDAPA supports the following proposed language as previously presented by PSBA at the Special Education Communication Council meeting July 19, 2007:

#### **§14.145 Least Restrictive Environment**

**(1) To the maximum extent appropriate, children with disabilities must be educated with children who are nondisabled.**

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**(3) A student with disabilities shall only be removed from a regular education setting if the student cannot derive meaningful educational benefit from specially designed instruction with supplemental aids and services provided pursuant to an appropriate IEP.**

LDAPA supports the full continuum of placement options in accordance with the individual needs of the students to achieve meaningful educational benefit. In some instances, placement in the general education environment would amount to the most restrictive environment for students with specific learning disabilities.

#### **§14-161 Prehearing Conference**

The elimination of the Prehearing Conference is of great concern to LDAPA. Parents must initiate Due Process prior to holding a Resolution Session, §14.163. The ultimate impact of removing the opportunity to resolve issues of conflict early and without undue formality will clearly inhibit parents from pursuing their due process rights.

The Prehearing Conference served as a “safety valve” for parents and professionals to resolve issues in a less adversarial manner. Since it didn’t rise to the level of discourse, it served both parties and avoided the more hostile engagement occurring in due process.

The removal of Prehearing Conferences has additional implications for less fortunate parents, who are unable to pay for legal representation, to ensure their child’s educational needs are being met. Ultimately, it discriminates against those who may be of a lower social or economic level and in effect eliminates due process protection for poor children at risk.

