

A leading voice  
in Harrisburg on  
disability issues.



The  
**Arc**

Pennsylvania  
SYSTEMS ADVOCACY • GOVERNMENT AFFAIRS

Suite 8 - Executive House  
101 South Second Street  
Harrisburg, Pennsylvania 17101  
(717) 234-2621 ♦ 234-7615 (fax)  
[www.thearcpa.org](http://www.thearcpa.org)

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*The Arc of Pennsylvania is  
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INDEPENDENT REGULATORY  
REVIEW COMMISSION JUL 27 2007

PA. STATE BOARD  
OF EDUCATION

July 26, 2007

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

Dear Mr. Buckheit,

The Arc of Pennsylvania has been a strong proponent of the roundtables and public comment opportunities relative to Pa. Code 22- Chapter 14 regulations. We testified before the Board and were active in a coalition of advocates (the VALUE Coalition) that pushed for many improvements. We are pleased with many of the reform provisions included in the proposed regulations, especially the addition of specific language on least restrictive environment, which will now clarify in the regulations how inclusion is to be applied to students with disabilities.

However, The Arc of Pennsylvania has the following concerns:

1. Student evaluations should be conducted in 60 calendar days, as opposed to 60 school days. The regulations as proposed would place Pennsylvania tied for 50th among the states for length of time set for evaluations. This time frame frequently permits a school district to delay an evaluation over an entire summer. Federal IDEA regulations allow for 60 calendar days.
2. The original draft proposal of March 21, 2007 prohibited prone restraints. Please add that provision back to the regulations. Prone restraints have proven dangerous and deadly to children. The Arc of Pennsylvania helped craft the VALUE Coalition position on the use of positive behavioral approaches and strongly supports its position on parent notification on the use of any restraint. The Arc of PA is disturbed that the language seems to encourage including restraints in the IEP of a student, and allowing a physician to prescribe the use of restraints on a student. PDE's counterpart, the Department of Public Welfare, has either eliminated the use of restraints or have strict restrictions and/or reporting requirements in place relative to restraints in their adult services systems—why would regulations governing children with disabilities be promulgated seemingly 180 degrees from those governing adults with disabilities?
3. The Arc of PA calls for the elimination of the current two-tier appeal system for special education and replace it with a one-tier system. The Arc of Pennsylvania has observed several failures in the current two-tier system of due process, including inconsistent decisions among panels, different judicial philosophies

**Advocacy & resources for citizens with  
cognitive, intellectual and developmental disabilities**

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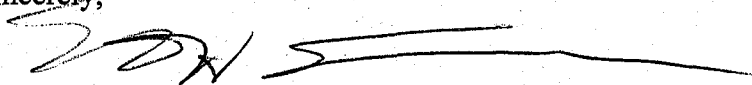
among panels and panel members, lack of decisional integrity and insufficient training and recruitment of panel members. The Arc of Pennsylvania recommends that the two-tier appeal process be replaced with a one-tier system that emphasizes appropriate recruitment, training and compensation for a highly professional group of hearing officers, with all appeals to proceed directly to court.

4. The Arc of PA recommends that the Office for Dispute Resolution for the special education due process system be made independent. The federal IDEA requires that hearing officers be independent of local educational agencies at the first level of appeals and independent at the second level of state educational agencies. Currently, the Office of Dispute Resolution is funded by the Department of Education and housed and managed by an Intermediate Unit near Harrisburg. This fuels serious concerns that PDE can interfere with personnel matters and that the office holds a bias in favor of school districts. The ODR should be located in a neutral site, have balanced governance, and receive a direct appropriation to fund its operations.

5. Move the burden of proof in special education due process proceedings from parents to school districts. The U.S Supreme Court case Schaffer vs. Weast determined that the party "seeking relief" has the burden of proof in IDEA due process proceedings UNLESS state rules indicate otherwise. The Supreme Court acknowledged that school districts have a natural advantage over parents in a dispute, particularly when it comes to resources. Pennsylvania has no statute or regulation that assigns the burden of proof to school districts and therefore it falls on the parents. It is important to recognize that few parents go into the process with the resources or legal knowledge to properly present their case against seasoned professionals representing school districts. The regulations should clarify that the burden of proof is on school districts and not parents in such matters.

The Arc of Pennsylvania will continue to advocate for what we believe is best for students with disabilities. We urge the Board to exhibit leadership and include our recommended changes to the Chapter 14 regulations so that education outcomes for students with disabilities in the Commonwealth can improve. Thank you for the opportunity to comment on the proposed special education regulations.

Sincerely,

  
Stephen H. Suroviec

cc: Arthur Coccodrilli, Chair, Independent Regulatory Review Commission  
The Honorable James J. Rhoades, Senate Education Committee  
The Honorable Raphael Musto, 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 of the House of Representatives  
The Honorable Barbara McIlvaine-Smith, Chair, Subcommittee on Special Education