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ID#6-306   2007 JUL 30 PM 3: 13

July 27, 2007   INDEPENDENT REGULATORY
                                                            REVIEW COMMISSION

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

Dear Mr. Buckheit:

The Advisory Panel on Least Restrictive Environment to the Director of the
Pennsylvania Department of Education's Bureau of Special Education appreciates this
opportunity to comment on proposed 22 PA Code Chapter 14. The Advisory Panel on
LRE sent representatives to participate in the public comment sessions in January, and
also submitted written comment at that time.

We are pleased to see additions to the regulations that codify applicable court cases that
explain, functionally, the "least restrictive environment" requirement of IDEA. In
Oberti, Girty, and other decisions, the Third Circuit Court of Appeals has set out the
standards for educators to follow, and these standards will now be specifically laid out in
the state law. This addition to the regulations is especially important to panel members as
they work with PDE to implement the Gaskin's Settlement Agreement throughout the
Commonwealth.

The Advisory Panel on LRE also would like to express concern on the version of Chapter
14 that was passed at the May, 2007 State Board meeting. This version retreated
significantly from earlier versions in the area of Behavior Support (14.133). This retreat
from the earlier version stands to have an adverse and dangerous impact on children with
significant disabilities, children who often are without the communication skills to tell
professionals, and families what happened or how they feel. Proposed 14.133, in its
current form, ignores the research and experience of individuals and systems that have
committed to and achieved restraint reduction and, ultimately, <u>elimination.</u>

The regulation also outlines an unprecedented and unlimited 30-second restraint. This
regulation would allow the restraint to occur repeatedly during the day, for any reason as
long as the restraint does not exceed the 30-second time limit. It does not require staff
members to report the hold to parents, convene and IEP meeting, or collect data on the
use of repeated holds in accordance with 14.133 (c) (4). Further, it seems unlikely that
there would in all situations be someone present to count, or time the restraint with the
use of a watch. **This proposed language should be eliminated entirely.**

During the roundtables on Chapter 14, the LRE Advisory Panel also recommended that the work "positive" be added to 14.133 so that it would read "positive behavior support". This addition would serve as a reminder that children with challenging behaviors respond best when they are approached with positive techniques.

We are also concerned about the proposed regulations in that they delete language that requires an IEP meeting within ten school days whenever a restraint is used within the school. The new language says "an IEP meeting need not be convened if the sue of the restraint was consistent with the explicit provision of the existing IEP and that IEP remains current and appropriate for the student". Parents must be notified whenever a restraint has been used and an IEP meeting must be called to discuss the events surrounding the use of the restraint.

Lastly, in March, 2007 draft, prone restraints were added to 22 PA Code 14.133(e), a list of "aversive techniques of handling behavior (which) are considered inappropriate and may not be used by agencies in education programs". The current draft still allows for but discourages prone restraints. Such restraints are permitted if "determined necessary by a physician and documented in the student's current IEP." **We would ask that prone restraints be prohibited as they were in the March, 2007 draft of the regulations.**

We greatly appreciate this opportunity to express our input on the proposed Chapter 14 and urge your most serious consideration of our proposal.

Respectfully Submitted,

Cathy L. Taschner, Ed.D
Chairperson
On behalf of the Advisory Panel.on LRE