

RECEIVED Pennsylvania Association of Resources
Autism • Intellectual Disabilities

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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

**Re: Comments on Proposed Rulemaking Chapter 14 Special Education Services
and Programs**

Dear Mr. Buckheit,

Thank you for the opportunity to provide comments on the above-referenced proposed rulemaking. The Pennsylvania Association of Resources for Autism and Intellectual Disabilities (PAR) is a statewide association whose members provide the full range of supports and services to more than 42,000 individuals with intellectual disabilities as well as 8,000 people living with autism in over 4,500 locations in the Commonwealth, as well as non-residential and in-home supports.

PAR's comments and recommendations are provided below:

Section: §14.105 Personnel

Discussion: §14.105 pertains to instructional paraprofessional staff and proposes to align their qualifications with those of paraprofessionals employed in schools that receive Federal Title I funds and those employed in prekindergarten programs. If the regulations are promulgated in their current form, effective July 1, 2008, an early intervention (EI) program will be limited to hiring paraprofessionals who have an Associate's Degree or 2 years of post-secondary education and existing staff will have until July 1, 2010 to comply with the educational requirement.

The proposed regulations do not take experience or alternative educational methods into account nor do they take into account that we need to select from a very diverse workforce, some of which would meet comparable experience requirements but not the formal education required in these draft regulations. For example, many providers work with local community colleges and training programs like the College of Direct Support (a national, web-based curriculum designed for individuals who support people with developmental disabilities) and the Child Development Associate program (a national credentialing program) to promote certification and credentialing of personnel. It is strongly recommended that such practices be permitted under the regulations. This would enhance our success accessing a qualified workforce by recognizing that there are diverse ways that people can legitimately qualify (e.g., formal education, experience, credentialing or other acceptable training).

Without the range of ability to hire people who have comparable levels of experience and/or credentialing it further exacerbates the shortage of paraprofessionals. Therefore, we recommend allowing for alternative comparable ways to qualify as outlined in our recommendations below.

Recommendation: Add the following language to §14.105(a): *Have completed a recognized certification and/or credentialing program in special education, early intervention, or a related field. 5 years of experience in special education, early intervention, or a related field.*

If this recommendation is not accepted, we recommend that providers be given additional funding to meet the new requirements and that the July 1, 2008/July 1, 2010 deadline be extended.

Discussion: §14.105 (4) b states “Nothing in subsection (a) should be construed to supersede the terms of a collective bargaining agreement in effect on _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking).” Does this mean that a collective bargaining agreement takes precedence over the requirements in subsection (a) in that a collective bargaining agreement could negotiate a greater or lesser degree of qualification? PAR supports the grandfathering of existing staff with collective bargaining agreements and the implication that when the agreements expire the regulations at this section will be fully implemented.

Recommendation: Clarify that §14.105 (a) will take effect once the collective bargaining agreement that is in existence at the time of the effective date of the regulations expires.

Section: §14.133 Behavior Support

Discussion: §14.133 (c)1 states “When there is evidence to suggest that the emergency use of restrictive procedures such as restraints may be necessary to ensure a student's safety or the safety of others, parental consent should be obtained. If a restrictive procedure is needed on an emergency basis, parents should be informed and consent for future uses obtained within 10 school days following the need for the use of a restrictive procedure.” At 14.133(b)(i), the definition of a restraint is a device or technique lasting more than 30 consecutive seconds.

While positive techniques are always preferred and are what providers strive to implement, young children, particularly the population dealt with by EI providers, don't always exhibit control of their behavior.

Consider the following example. A teacher may pick up a 3 year old child onto their hip to return to a classroom. If this child is showing any resistance such as squirming or crying, and the trip

back to the classroom lasts longer than thirty seconds, it appears that the regulations would call that a restraint that would require notification of the parents. This same child, carried in a similar way by a parent in a store, needing to be moved along, would not be considered "restrained." These types of examples warrant revisions to the definition of restraints, for example, "escorting through carrying" should be part of what is excluded from the definition of restraints.

Also of concern are sections (c)2 and (h) which state,

"The use of restraints to control the aggressive and self injurious behavior on the part of an individual student shall cause a meeting of the IEP team within 10 school days of the behavior causing the use of restraints unless the use of restraint was consistent with the explicit provisions of the existing IEP and that IEP remains current and appropriate for the student." "Injuries requiring treatment by medical personnel that occur as the result of self injurious behavior or a non-accidental act by another student shall receive prompt review within 10 school days."

While PAR agrees that serious injuries and restraints must be reviewed, we are concerned that these requirements could be interpreted very broadly and lead to an abundance of meetings to address minor injuries not meeting the definition of an injury beyond standard first aid. We agree that injuries beyond standard first aid would warrant an IEP meeting within 10 days.

For example, if at any time a student causes a superficial mark on him/herself, which a school nurse evaluates and treats with basic first aid, it would seem to require an IEP (Individualized Education Program) team meeting. This could be overwhelming and unnecessary for families and providers.

We recommend that the term "medical personnel" be removed and the following definition used related to injury: "*A non-accidental injury requiring treatment beyond standard first aid.*" The term "beyond first aid" is used in a Pennsylvania Department of Public Welfare Mental Retardation Bulletin #6000-04-01 entitled "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. (Of course parents should be notified for any such injury, or even more minor injuries as they request.)

Discussion: §14.133 (c)(4) states "School entities shall maintain and report data on the use of restraints as prescribed by the Secretary." When developing the reporting requirements for this section, PAR recommends that the Secretary keep in mind the reporting method should be simple, non-duplicative of other existing requirements, and not implemented in a way that would increase unnecessary paperwork, staff time, or costs.

PAR also recommends that the data be used 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 which can have the effect of discouraging necessary reporting.

Recommendations: Add the following phrase to section (i) *“Carrying or escorting a child to and from classrooms or similar settings for safety reasons is excluded from this definition.”*

Revise section (h) to state *“Injuries requiring treatment 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 10 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 beyond first aid.”*

Add the following definition, per DPW Bulletin 6000-04-01, *“Injury requiring treatment beyond first aid. Any injury that requires the provision of medical treatment beyond that traditionally considered first aid. First aid includes assessing a condition, cleaning an injury, applying topical medications, applying a Band-Aid, and the like. Treatment beyond first aid includes lifesaving interventions such as CPR or use of the Heimlich maneuver, wound closure by a medical professional, casting or otherwise immobilizing a limb. Evaluation/assessment of an injury by emergency personnel in response to a “911” call is reportable even if the individual is not transported to an emergency room.”*

Ensure that data is collected and used appropriately.

Section: §14.153 Evaluation

Discussion: §14.153 states “Notwithstanding the requirements [adopted by reference] in 34 CFR 300.122 (relating to evaluation).” Write the language more clearly since “notwithstanding the requirements” is language that is not particularly easy to understand. Does it mean ‘in addition to?’

§14.153 (4)(i) states “Initial evaluation or reevaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60 calendar days after the early intervention agency receives written parental consent.”

Discussion: Currently, if parents don’t give consent in 10 days, the re-evaluation may take place. Parents often don’t sign reevaluation consent forms; two of the reasons are: unresponsiveness and fear that if tested the child will lose eligibility and hence their service. This is particularly a problem when a child is in a center based preschool program and parents rely on it for childcare, respite, etc. Due to these reasons, we recommend retaining the current allowance for re-evaluation after 10 days.

Recommendations: Use simpler language than “notwithstanding the requirements.”

Retain the current practice of allowing re-evaluation to take place within 10 days if parental consent is not given.

Section: §14.155 Range of Services

Discussion: §14.155 (a) states “The Department will ensure that options are available to meet the needs of children eligible for early intervention. The options may be made available directly by early intervention agencies or through contractual arrangements for services and programs of other agencies in the community, including preschools [provided these other agencies are licensed, when appropriate, by the Department or the Department of Public Welfare]. The options may be made available directly by early intervention agencies or through contractual arrangements for services and programs with other agencies in the community, including preschools, provided that the other agencies are subject to the supervision or licensure of the Department of Public Welfare or licensed by the State Board of Private Academic Schools.”

Discussion: We understand this to mean that non-licensed and licensed programs are appropriate to meet various individual needs. It would be helpful to clarify it as such.

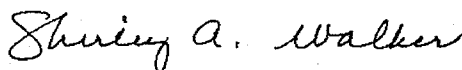
Additionally, the phrase “the options may be made available directly by early intervention agencies” needs to be clarified. EI providers are not responsible to pay for child care, but this section could be interpreted that way.

Recommendations: Add “non-licensed” after licensed so that it reads “licensed or non-licensed when appropriate.”

Clarify that EI providers are not responsible to pay for child care services.

Thank you for considering our comments and recommendations. If you have any questions, please do not hesitate to contact me.

Sincerely,



Shirley A. Walker
President and CEO

