

Jim Buckheit
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Dear Mr. Buckheit:

I am an advocate for students with disabilities. Please accept the following comments on the State Board of Education's proposed Chapter 14 regulations. 2007 AUG -2 AM 9:46

INDEPENDENT REGULATORY
REVIEW COMMISSION

1. I applaud the addition of least restrictive environment language to adhere to the standards set by the Oberti decision. The addition of this specific language will now clarify how students with disabilities are to be included in their education programming.
2. Evaluations should be conducted in 60 calendar days, as opposed to 60 school days. If adopted, the proposed regulation would place PA tied for 50th place in the US for length of time set for evaluations. This time frame can lead to a delay over an entire summer. Federal IDEA regulations allow for 60 calendar days.
3. Return to the original March 21 draft proposal of the regulations, and prohibit prone restraints. Prone restraints have proven dangerous and deadly to children. I support the VALUE Coalition's position on the use of positive behavioral approaches, and I strongly support its position on parent notification on the use of any restraint. I am very disturbed that the proposed regulation as written seems to encourage including restraints in the IEP and allowing a physician to prescribe the use of restraints on a student.
4. Change the current two-tier appeal system and replace it with a one-tier system. There are several failures in the current two-tier system of due process, including inconsistent decisions among panels, different judicial philosophies among panels and panel members, no decisional integrity and insufficient training and recruitment of panel members. Most appeals at the 2nd tier are lost by parents. The regulations should replace the current two-tier appeal process 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.
5. Make the Office for Dispute Resolution for the special education due process system an INDEPENDENT office. 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 from state educational agencies. Currently, the Office of Dispute Resolution is funded by the PA Department of Education and housed and managed by an Intermediate Unit near Harrisburg. This fuels concerns that PDE can interfere with personnel matters and that the office holds a bias in favor of school districts. The office should be located in a neutral site, have balanced governance, and receive a direct appropriation to fund its operations.
6. Shift 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. PA has no statute or regulations that assigns the burden of proof to school districts and therefore it falls on the parents. 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 place the burden of proof on schools, and not parents.

Thank you for considering my views. Please keep students with disabilities foremost in mind as you consider changes to these proposed regulations, and NOT the school districts or professionals.

Thank you.

CHAPTER 14
PUBLIC COMMENTS

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