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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

**This document is not the version of the regulation that  
will be considered by the Independent Regulatory  
Review Commission at its June 5, 2008 Public Meeting.**

The original submittal of the final-form regulation was revised by tolling the regulation under the Regulatory Review Act to make two amendments. These amendments are described in the document named "TOLL ISSUES" under the "Related Documents" section at the bottom of the website page for this regulation. The revised document that will be considered at public meeting on June 5 can be found on the website page for this regulation by clicking "Download Final Regulation" at the top of the final regulation column.

The website page for this regulation is  
<http://www.irrc.state.pa.us/Regulations/RegInfo.cfm?IRRCNo=2618>

If you have any questions, please call the Independent Regulatory Review Commission at 717-783-5417.

# Regulatory Analysis Form

This space for use by IRRC

(1) Agency

State Board of Education

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(2) I.D. Number (Governor's Office Use)

006-306

INDEPENDENT REGULATORY  
REVIEW COMMISSION

IRRC Number: 2618

(3) Short Title

Chapter 14 - Special Education Services and Programs

(4) PA Code Cite

22 PA Code Chapter 14

(5) Agency Contacts & Telephone Numbers

Primary Contact: Jim Buckheit, (717) 787-3787  
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(6) Type of Rulemaking (check one)

- Proposed Rulemaking  
 Final Order Adopting Regulation  
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No  
 Yes: By the Attorney General  
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

Chapter 14 establishes requirements for identification, screening and evaluation of students with disabilities. It defines requirements for the development of an individualized education program for each identified student, describes policies for placement in appropriate educational settings, outlines requirements for early intervention programs and establishes procedural safeguards for the resolution of complaints.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Public School Code of 1949 24 P.S. 13-1372 and 26-2603-B  
Individuals with Disabilities Education Act (P.L. 108-446) and its implementing regulations (34 CFR 300.1—300.818).  
Gaskin, Et Al. v. Commonwealth of Pennsylvania, Et Al. No. 94-4048

## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is mandated by state law in section 1372(1) of the Public School Code of 1949. Section 608 of the Federal Individuals with Disabilities Education Act (P.L. 108-446) and associated regulations (34 CFR 300.1---300.818) also requires that a state “ensure that any State rules, regulations, and policies relating to this title conform to the purposes of this title.”

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Chapter 14 establishes requirements for public schools to provide appropriate educational services to students with disabilities. The policies contained therein are required under the federal Individuals With Disabilities Act, which qualifies the Commonwealth to receive more than \$380 million each year in federal funding.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Failure to align state policies with the requirements of IDEA will jeopardize this Commonwealth’s eligibility to receive more than \$380 million each year in federal funding. In addition, approximately 270,000 children with disabilities would have limited protections and reduced levels of educational services and programs without state regulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Approximately 270,000 of Pennsylvania’s 1.8 million school-age children are identified as having a disability and receive services and programs as required by the Chapter 14 regulations. Another 21,000 preschool age children receive early intervention services. The breakdown by eligible exceptionality include (numbers rounded to the nearest thousand):

Mental Retardation 25,000	Deaf-Blind 70
Deafness or Hearing Impaired 3,000	Multiple Disabilities 3,000
Speech or Language Impairment 43,000	Autism 9,000
Blind or Visual Impairment 1,000	Traumatic Brain Injury 1,000
Serious Emotional Disturbance 26,000	Preschool 21,000
Physical Disability 1,000	
Other Health Impairment 12,000	
Specific Learning Disability 146,000	

### **Regulatory Analysis Form**

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

Educational paraprofessionals working with students with disabilities will need to meet new qualifications. Educational paraprofessionals, educational interpreters and personal care aides will need to participate in 20 hours of professional education related to their job responsibilities each year. There are several thousand paraprofessionals working with students with disabilities. Approximately 300 educational interpreters are affected by the regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply).

School districts (501), intermediate units (29), area vocational technical schools (82) and the governing boards (612), administrative staff (7,000), instructional staff (122,000) and support service professional and paraprofessional staff (15,000).

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

A committee of the State Board held five public regional roundtable meetings in December 2006 and January 2007 that were attended by over 375 individuals. Two roundtables were held in Harrisburg. The others were held in King of Prussia, Pittsburgh and the Lehigh Valley. Three regional public hearings were held in Harrisburg, King of Prussia and Pittsburgh. 58 individuals and organizational representatives presented testimony at the hearings. Notice of the roundtable meetings and public hearings were posted on the State Board web page, announced in public meetings of the State Board, email notices sent to all school administrators and to the Board's stakeholder list and mailings to the Chapter 14 interested parties list, Sunshine Meeting Notices were posted and legal notices placed in newspapers. In addition, the Department of Education alerted its contacts about the roundtable meetings and hearings as did numerous advocacy and state education associations through their own communication networks. Draft versions of the Chapter 14 regulations were posted on the State Board web page throughout the drafting process. The Board's Chapter 14/16 Committee held eight public committee meetings where the draft proposed and final regulations were discussed.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

None

### **Regulatory Analysis Form**

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

As the current two-tier system for due process hearings and appeals (14.162) transitions to a single level system next year, public schools will save approximately \$958,855 annually. The responsibility for the cost of hearing officers, transcripts, travel and related administrative costs will shift from local school entities to the Department of Education.

With the reduction in the timeframe for completion of evaluations and reevaluations from 60 school days to 60 calendar days (14.123, 14.124) we estimate that 10 to 20 additional school psychologists will be needed in order to meet the accelerated evaluation timeframes in school entities that have a high percentage of students with disabilities. With average salary/benefit costs of approximately \$75,000 the cost to school entities will total approximately \$1,125,000.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The Department will receive savings from the elimination of appeals panel system. The Department will save approximately \$251,000 annually. However, with the elimination of the appeals panels the Department assumes responsibility for costs associated with the first-level due process hearings. These include the cost of hearing officers, court reporters, travel and related costs which were previously paid by local school entities. When the appeals panel system is eliminated the single-level system will result in annual costs to the Department of approximately \$976,000.

## Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>						
<b>Local Government</b>	\$0	\$958,855	\$958,855	\$958,855	\$958,855	\$958,855
<b>State Government</b>	\$0	\$131,000	\$251,000	\$251,000	\$251,000	\$251,000
<b>Total Savings</b>	\$0	\$1,089,855	\$1,209,855	\$1,209,855	\$1,209,855	\$1,209,855
<b>COSTS:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>	\$0	\$1,125,000	\$1,125,000	\$1,125,000	\$1,125,000	\$1,125,000
<b>State Government</b>	\$0	\$1,096,000	\$976,000	\$976,000	\$976,000	\$976,000
<b>Total Costs</b>	\$0	\$2,221,000	\$2,101,000	\$2,101,000	\$2,101,000	\$2,101,000
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>	0	0	0	0	0	0

(20a) Explain how the cost estimates listed above were derived.

Cost savings to school entities during fiscal 2008-09 and beyond will save \$958,855 annually. These cost savings result from the shift in fiscal responsibility from local school entities to the Department as a result of the elimination of the second tier of the two-tier due process hearing and appeals process. The Department currently is responsible for costs associated with the second level appeals. Since the second level appeal panels are being eliminated the single level due process hearing system becomes the responsibility of the state. These costs are based on the actual five-year annual average for these costs as reported by school entities.

Cost savings to state government in fiscal 2008-09 are estimated at \$131,000 and \$251,000 in each fiscal year thereafter. During fiscal 2008-09 the Department will phase out the second-level appeal system and therefore continue to incur costs for its operation as it is phased out. That system will be eliminated by 2009-10 thereby saving state government \$251,000 annually.

School entities will no longer pay for hearing officers, their travel or court stenographers effective July 1, 2008. However, it is estimated that school entities will need to hire an additional 10 to 20 school psychologists to the current 1,200 statewide in order to meet the 60 calendar day evaluation/reevaluation timeframe for completing evaluations and reevaluations. At an average annual cost for salary/benefits of approximately \$75,000 the total cost is estimated to range from \$750,000 to \$1,500,000 annually. For purposes of estimating costs above the cost of 15 additional school psychologists is used (\$1,125,000).

Effective July 1, 2008 the Department will be responsible for costs associated for hearings related to any appeals of first-level due process hearings that were filed before July 1, 2008 which are estimated to be \$120,000 in addition to funding the new single-level due process hearing system which is estimated to cost \$976,00 annually. Costs for the appeal panel will end in fiscal 2008-09. The \$976,000 amount is based on employing 5 full-time hearing officers, stenographic services, travel and on-going professional development of hearing officers.

**Regulatory Analysis Form**

(20b) Provide the past three year expenditure history for programs affected by the regulation.

<b>Program</b>	<b>FY -3</b>	<b>FY -2</b>	<b>FY -1</b>	<b>Current FY</b>
Special Education	\$929,175 million	\$953,064 million	\$980,619 million	\$1.010 billion
Early Intervention	\$117,607 million	\$123,487 million	\$142,173 million	\$173,099 million
Charter Schls for Deaf and Blind	\$29,949 million	\$31,919 million	\$32,944 million	\$34,236 million
Approved Private Schools	\$80,651 million	\$83,772 million	\$86,461 million	\$89,901 million

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The regulation is necessary to align state policies with the requirements of the federal Individuals With Disabilities Education Act. Without the regulations the Commonwealth would not qualify for substantial federal funding. Other changes will improve the quality and timeliness of services and protections for students with disabilities. These include reducing the maximum time permitted to complete an evaluation/reevaluation so that students can benefit sooner from appropriate educational and other supports and services.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

The Commonwealth is required by the federal Individuals with Disabilities Education Act (IDEA) to align its policies with federal law and regulations. Therefore nonregulation is not an option.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

N.A.



### Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

Qualifications for paraprofessionals (§14.105), Qualifications for education interpreters (§14.105), transition planning at age 14 (§14.131), reporting on use of restraints (§14.133), and provision to maintain a child's pendency as to their current educational placement during mediation (§14.162).

This Commonwealth has a long history and tradition of providing leadership in the field of special education. The staffing, transition planning, reporting and placement requirements are intended to ensure that the educational programs and protections for children with disabilities are the best available within the constraints of available federal, state and local resources.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The regulation assures that Pennsylvania's children with disabilities are provided a free appropriate public education that will allow them to reach their maximum potential. The regulation will not put Pennsylvania at a competitive disadvantage. In certain issues like the 60-calendar day evaluation timeframe, the regulation brings Pennsylvania into closer alignment with a majority of other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation revises the Board's existing Chapter 14 regulation to align them with new federal requirements, state statutes, judicial decisions and settlement agreements. They influence the revision of the Department's Chapter 711 regulation which establishes requirements for special education services and programs in charter schools and cyber charter schools.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Board's Chapter 14 committee held numerous public roundtable meetings, public hearings and committee meetings beginning in November 2006 through its adoption of final regulations in November 2007. Therefore additional public hearings are not needed.

**Regulatory Analysis Form**

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

Yes. Schools are required to maintain data on the use of restraints. Longstanding federal reporting requirements dictated that the Department establish and maintain a system known as Penn Data that has been in operation for decades. These regulations include language that merely recognizes that fact and authorizes, in state regulation, the Department to continue to operate that system. The requirements for the system are dictated by the federal government, court orders, settlement agreements and other factors unrelated to the reporting language included in this regulation.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The entire chapter addresses the needs of students and young children with disabilities. Various provisions address specific types of disabilities such as children who are deaf or hearing impaired, blind, autistic, mentally retarded, brain injured and others.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will become effective on July 1, 2008.

(31) Provide the schedule for continual review of the regulation.

State Board of Education policy is to review its regulations every four years.

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)

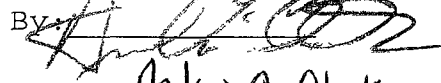
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By: \_\_\_\_\_  
(Deputy Attorney General)

State Board of Education  
(Agency)

By:   
Andrew C. Clark

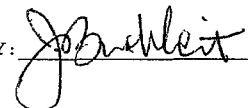
DOCUMENT/FISCAL NOTE NO. #006-306

MAY 5 2008

DATE OF ADOPTION: November 15, 2007

DATE OF APPROVAL

DATE OF APPROVAL

BY:  \_\_\_\_\_

Deputy General Counsel  
(~~Chief Counsel~~),  
(~~Independent Agency~~)

(Strike inapplicable title)

TITLE: (EXECUTIVE DIRECTOR, CHAIRMAN OR SECRETARY)

( ) Check if applicable  
Copy not approved.

( ) Check if applicable.  
No Attorney General approval  
Or objection within 30 days  
After submission.

FINAL REGULATION  
COMMONWEALTH OF PENNSYLVANIA  
  
22 PA. CODE, CH. 14  
SPECIAL EDUCATION SERVICES AND PROGRAMS

**Commonwealth of Pennsylvania  
State Board of Education  
22 PA Code Chapter 14**

**Responses to Official Public Comments  
Proposed Rulemaking Published  
Pennsylvania Bulletin  
June 30, 2007**

The State Board of Education published proposed regulations in the June 30, 2007 edition of the Pennsylvania Bulletin (37 Pa.B. 2961). Interested persons were invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the State Board of Education. The Board received 257 written comments via mail and email during the 30-day public comment period. An additional 53 written comments were received after the comment period. The following document provides a summary of comments received and provides 1) the list of commentators, 2) the substance of the comments, 3) the reasons for the comments. After the discussion of comments, a description of the modifications to the regulation in response to the comment is provided. It also discusses why modifications were not made and the reason for the Board's action on the comment.

Comments were submitted and received from the following individuals during the 30-day public comment period: Dee Alpert, Patricia Amos, Alan Anderson, Maria Antonoulis, Lori Arcq, Cassandra Auerbach, Carolyn Balance, Maureen Barber-Carey, Ernesto Barnabas, Paul Barr, Larry Bassett, Kathleen Bastow, William Batzel, Robert Beach, Laura Bennett, Joan Berququist, Bernadette Black Berardinelli, Casey Blake, Kerri Bloom, Madelyn Bognatz, Dolores Bostak, Suzanne Brannagan, Dan Brant, Lawrence Brick, Kathy Brill, Maureen Broderick, Don Broderick, Richard Bucchaianeri, Nancy Bumbarger, Valerie Burnett, William Burnett Jr., Elgina Byrd, Elizabeth Capparella, Jody Caprio, Phyllis Cardillo, Chuck Carnahan, Allison Carr, Kathy Carver, David Casazza, Dean Casello, JoAnn Castle, William B Chain III, Gail Chiles, Randi Chud, Susan Clark, Robert Cline, Joyce Cole, Regina Conway, Heidi Cook, James Coyle, Diane Crocco, Lynn Cromley, Jacqueline Crouse, Daniel Currie, Judith Czarnecki, Barry Dallara, Jennifer Dan, Brenda Daniels, Sharon Denham, Lonni DePolo, Callie DeSimone, Camille Desnoyers, Cynthia Dias, Kelly Dickey, Amy DiFilippo, Jane DiMenno, Richard DiObilda, Barbara Dively, Kim Dodson, Edna Donovan, Carolyn Dorm, Shari Draayer, Elaine Dryden, Cindy Duch, Beth Eagen, Karen Earley, Jeff Ebert, Maria Edelberg, Lawrence W. Emark, Nicole Emshwiller, Maureen Esposito, Nina Esposito-Visgitis, Marsha Fabian, Debbie Fabio, David Farrand, Janet Fasy, Lisa Feissner, Deborah Fige, Ambrose Finnegan, Joseph Fischgrund, Laura Fitz, Mary Flaherty Artuso, Nicole Flamer, Karin Fox, Mark Frew, Ruth Furman, Tammie Gasior, Olayemi Gbadamosi, Susan Geiger, Joseph Glazenski, Ilene Greenstone Pamela Grossman, Bill Grove, Amy Guthrie, Donna Hake, Trond Harman, Holly Harrington, Lynne Harrison, Nicole Henshaw, Thomas Hensley, Frank Herron, Vernon Herzog, Barbara Hightree, Joseph Hilbish, Vivian Hinkle, Catherine Hogue, Arlene Horkey, Dorothy Horvath, Felicia Hurewitz,

Jeffrey Iseman, Brenda Jewell, Lisa Jochum, Julie Jordan, Barb Jumper, Marlee Juranovich, Cynthia Keenan, Sherry Kidd, Christina Kilby, Dee Kinkopf, Rikki Kish, Zmaragdo Klein, Pam Klipa, Holly Knauer, D Knight, Timothy Knoster, Amy Koegler, Carolyn Komich Hare, Fred Krause, Lisa Kray, Georganna Kresl, Dennis Krivacek, Kimberly Krug, Polly Lamison, Kim Lane, Camilla Lange, Emily Leader, Deborah Leggens, Darlene Lenzel, Marla Lipkin, Anne Loeffler, David Loeffler, Constance Lupatsky, Sallie Lynagh, Sally Machemer, Sharon MacNamara, Michele Mailman, Catherine Martell, William Martens, Cindra Mayak, Dennis McAndrews, Erin McCann, Deborah McCarter, Charleen McGrath, Jill McIntosh, Brian Patrick McLaughlin, Lori Messmer, Sandra Jane Metzler, Jo Ellen Meyer, Amber Mintz, Nancy Moser, Linda Moser, Catherine Muhammad, Denise Muir, Migdalia Neely, Robert Niemi, Terry O'Connor, Kathryn Orban, Susan Pagano, Rhonda Paglia, Anne Painter, Judy Pamer, Nancy Payton Checchia, Darla Pianowski, Tara Potterveld, Leslie Powell, Wayne Proctor, Jean Purnell, Lisa Purnell Noll, Linda Rainey, Sheila Reiber, Diane Reisinger, Deborah Rhodes, Susan Rhodes, Victoria Rice Campbell, Susan Riffe, Shirley Riffle, Charles Robey, Alexandra Robinson, Cathy Rocchia-Meier, David Romanyshyn, Moira Rowan, Lois Runkle, Barbara Rupp, Charles Rush, Jr., Omar Sanders, Debra Schafer, Diane Schlegel, Ruth Ann Schornstien, Sally Schuster, Jennifer Searcy, Joan Sechrist, Barbara Sedley, Theresa Semple, Joyce Shade, Ilene Shane, William Shoemaker, Ivie Simons, Ann Smith, Michelle Smithman, Betsy Snyder, Deborah St. Clair, Jon Steenson, Holly Steiner, Karen Stickler, Stacy Stone, Christopher Strayer, David Stricker, Stephen Suroviec, Steve Suroviec, Linda Swope, M. Christopher Tabakin, Veronica Thomas, Margaret Thomas, Daniel Trimmer, Janet Trimmer, Stacey Troy, Bernice Tuckerman, Susanne Tuckerman, Deborah Tuttle, Mar Vial, Gail Vogel, Dave Von Hofen, Karen Voorhees, Lynn Wagner, Christopher Watson, Robin Watt, Robert Watters, Evalynn Welling, Cindy West, M. B. Whisler, Ed Williams, Susan Willis, Renee Wright, Judy Yoder, Kathleen Zielenbach, Barb Zimmerman and Pamela Zotynia.

Comments were received from the following individuals after the close of the 30-day public comment period: Mary Alderfer, Michelle Bitner, Karen DiBraccio, Maria Edelberg, Gloria Eichhorst, David Fine, Thomas Fogarty, Lisa Frantz, Linda Greeninger, Stacey Groder, Stanley Hamberger, Donna Hils, Michelle Hinkle Ostrow, Stephen Hughes, Mr. & Mrs. Jacobowitz, Jennifer Klazon, Nichole Kopco, Sheila Kostelnik, Michael Latusek, Barbara Lees, John Lozosky, Jean Maravich, Julianne Mayo, Brenda McBeth, Julie Medved, Deborah Miller, Lisa Miller, Bernard Miller, Katherine Mulcahy, Dollie Murphy, Pamela Peace, Carolyn Porter, Representative Kathy Rapp, Loraine Ricciuti, Marianne Roche, Kathie Saar, Karen Salomon, Lydia Schnetzka, Peggy Seemiller, Fran Serenka, Edward Sickles, Janet Stotland, Stinson Stroup, Barbara Tantaros, Brenda Taylor, Michael Thew, Lorne Topolin, Diane Truman, William Urbanek, Gary Urtz, Janet Valasek, Stewart Weinberg and Linda White.

Comments were also received from the House Education Committee and Independent Regulatory Review Commission.

Following is a consolidated listing of comments received on each section of the proposed regulations. Each listing is followed by the Board's response to the comments.

### **§ 14.101. Definitions.**

Comments address the following: expand the definition of autism to include the entire spectrum of autism; add a definition of dual exceptionality to identify students who are eligible for services under both Chapters 14 and 16; add a definition of specific learning disability; the definition of early intervention services is ambiguous and should be clarified; the Board should adopt the definition of early intervention services as contained in the Early Intervention Act; definitions should be included for the following terms: screening, qualified personnel for RTI, least restrictive environment, meaningful educational progress and how it is to be measured, appropriate, and academic standards; the terms *student with disability* and *student with mental retardation* should be used in a consistent manner throughout the regulation; add a definition of educational interpreter; revise the definition of developmental delay to be a delay of at least 33% in one area or 25% in two areas; add a definition of mentally gifted; add a definition of certificated staff member; and, suggest that all definitions be placed in section 14.101 rather than having some in this section and others placed sporadically throughout the document.

#### **Response:**

The Board believes the definition of autism in IDEA is sufficient to cover the entire autism spectrum and therefore it is not necessary to include a definition in Chapter 14.

The Board believes that a definition of dual exceptionality is unnecessary as Chapter 14 adequately addresses issues regarding disabilities and Chapter 16 addresses issues regarding giftedness. Proposed revisions to Chapter 16 provides that students eligible for services through both chapters are to have a single IEP. This requirement is sufficient to address the program and services for students eligible under both chapters.

The federal definition of specific learning disability is adopted by reference in Section 300.8 of IDEA.

The definition of early intervention services is revised.

The terms screening, qualified personnel for RTI, least restrictive environment, meaningful educational progress and how it is measured, appropriate and academic standards are either adequately defined in the federal regulations or are terms of art commonly used in the field of education. Therefore, the Board believes these terms are already sufficiently defined or generally understood.

The use of the terms *student with disability* and *student with mental retardation* have been aligned in a consistent manner throughout the regulation.

A definition of educational interpreter is added.

The Board prefers the current definition of developmental delay over that proposed by the commentator.

Chapter 16 (related to special education for gifted students) defines mentally gifted and the services to be provided so there is no need to include the definition of the term in Chapter 14.

Certificated staff member is term used in the field to distinguish those school employees who are required to possess a professional certificates, as issued by Department of Education, and as provided in the Public School Code of 1949, to serve in their position (teachers, administrators, counselors, etc.) and those school employees who are not required to have such certificates (paraprofessional, bus driver, custodian, etc.). School personnel are well aware of those who hold certificates and those who do not. As such, a definition is not necessary.

The Board generally follows the practice that if a term is used only once or limited to one section, the term is defined in that section. The Legislative Reference Bureau states that placement of a definition used only once is at the discretion of the Board and that either method is acceptable.

#### **§ 14.102. Purposes.**

##### **Comments:**

Comments on this section include the following: wording in (a)(1)(iv) does not make sense... it should say students have access to a full continuum of services; and, why isn't 34 CFR 300.518 adopted by reference?

##### **Response:**

The reference to 34 CFR 300.160 (relating to participation in assessments) is added to the list of federal regulations that are adopted by reference. The reference was left out of the proposed regulation through an oversight.

The Board revised (a)(1)(iv) as suggested. Several comments were received that suggested that 34 CFR 300.518 be adopted by reference. The Third Circuit Court of Appeals issued a ruling in *Pardini v. Allegheny Intermediate Unit*, 420 F.3d 181 (3<sup>rd</sup> Cir. 2005), *cert. denied*, 547 U.S. 1050 (2006), which conflicts with the federal regulation. The Commonwealth must adhere to the ruling of the Third Circuit.

#### **§ 14.103. Terminology related to Federal regulations.**

One comment was received regarding this section. It is the same as a comment received regarding section 14.101. It asks why isn't 34 CFR 300.518 adopted by reference?

**Response:**

Several comments were received that suggested that 34 CFR 300.518 be adopted by reference. The Third Circuit Court of Appeals issued a ruling in *Pardini v. Allegheny Intermediate Unit*, 420 F.3d 181 (3<sup>rd</sup> Cir. 2005), *cert. denied*, 547 U.S. 1050 (2006), which conflicts with the federal regulation. The Commonwealth must adhere to the ruling of the federal court.

**§ 14.104. Special education plans.**

Comments about this section include: revising the language regarding parent training to allow for school districts to contract for the provision of training; subsection (b)(4) is confusing as written; remove *as required by student's IEP* from (4); the reporting requirements described in (4)(i) be addressed through the semiannual reporting requirements rather than in the regulations; add a new subsection (b)(8) to address programs that serve identified students who are both gifted and have a disability; a question as to why has the time period for developing an early intervention special education plan been changed from 3 years to every year; the provision in subsection (i) that requires school entities to maintain information on students with disabilities is vague; and, language should be added to specify what information school entities must maintain.

**Response:**

The Board believes the language regarding parent training is sufficient to allow districts to contract for the provision of training. Subsection (b)(4) is revised as suggested. The Board believes the reporting requirements, although long established through federal reporting requirements and Public School Code of 1949 should be addressed in Chapter 14. The Board believes that Chapters 14 and 16 adequately address the programs and services provided under the two chapters through the provision contained in the proposed Chapter 16 regulations to require a single IEP that addresses the supports needed to address both a student's disability and giftedness.

The provision that changes the timeframe for submission of the early intervention plan from every three years to every year reflects current practice. The plan is submitted as part of the financial agreement that provides funding to early intervention providers. This document is revised every year to reflect annual funding provided by the Commonwealth.

The provision that requires schools to maintain information about students with disabilities as specified by the Secretary, and to report information as directed by the Secretary, merely reflects a long established provision in the Public School Code of 1949



(24 P.S. 13-1373). The Secretary must have discretion and flexibility to respond to changes in federal reporting requirements under IDEA and settlement agreements.

**§ 14.105. Personnel.**

**(a) Instructional Paraprofessionals:**

Comments submitted in response to the proposed qualifications for instructional professionals include: the subsections are not parallel and should each represent an enumerated job title; keep qualification requirements as they have been... don't add new ones; we disagree with college requirements for paraprofessionals, the new requirements will render finding substitute paraprofessionals impossible and they will limit ability of current paraprofessionals to move into other paraprofessional jobs; new requirements will require the salaries of paraprofessionals to be significantly increased and will be extremely costly to districts; schools will not be able to fill the paraprofessional positions and therefore will be unable to meet the IEP requirements; they pose an impediment to hiring future instructional support personnel; a survey of Chester County indicates that only 4% of current instructional paraprofessionals meet the educational qualifications called for in the proposed regulations; questions what kind of test can really assess skills for an aide; will coursework be provided via internet or at little or no charge; compassion and heart is what paraprofessionals need, not content knowledge; onerous demand to achieve an associate's degree or finish two years of college while holding a full time job; should exempt one-on-one paraprofessionals and personal care assistants; paraprofessionals who support students who take the PASA should not have to meet the NCLB requirements; should exempt paraprofessionals who have over 5 years of satisfactory experience and at least 50 hours of training; do these requirements apply to personal care aides; it is more important for paraprofessionals to know CPR and first aid; keep requirements as they are under NCLB and exempt those paraprofessionals who work with students taking the PASA; why is the word "instructional" necessary; proposed regulations do not take experience or alternative education methods into account; there should be diverse options to meet the requirements; if alternative isn't accepted then push back time line; offer clearer language on impact of Collective Bargaining agreements; explain the impact of the qualifications on paraprofessionals and why these qualifications are necessary; why are July 1, 2008 and July 1, 2010 the selected dates and are they reasonable; should further quantify these costs to both individuals and school districts; if a person fails the assessment can he or she take it over; The phrase "reasonable steps" is vague; and, the Board should consider defining an instructional aide so that these requirements do not pose significant costs to school districts to hire personnel as well as cause a negative impact on current jobs.

**Response:**

Many educators responded that requiring paraprofessionals to secure an Associate's Degree or two years of college was unnecessary, inappropriate and would greatly hamper school entities from employing paraprofessionals in order to meet the requirements of the IEP. Many paraprofessionals also responded with specific concerns.

In addition, there were a number of questions regarding what constitutes an *instructional paraprofessional*.

Final form regulations include definitions for (1) instructional paraprofessionals, and (2) personal care assistants so as to be clear as to who must meet the new requirements. The Board believes that paraprofessionals who assist teachers with academic instruction in the classroom need to possess reasonable qualifications. This is consistent with federal requirements under the No Child Left Behind Act (NCLB). Since 2006, NCLB requires paraprofessionals funded through federal Title I funds to meet standards comparable to those proposed in Chapter 14 (see 22 Pa Code 403.5). In addition, the Board promulgated similar provisions in 2006 that require classroom aides in prekindergarten programs to meet similar qualifications by 2010 (see 22 Pa Code 4.20(7)).

Public schools currently employ nearly 31,000 instructional paraprofessionals. Given the demands of increased academic rigor and increased preparation and ongoing professional education requirements for teachers, the Board believes it is reasonable and appropriate to establish qualifications for support staff who assist in the delivery of instruction in the classroom. The Board does not believe that paraprofessionals employed as playground and lunchroom aides, bus monitors and those performing non-academic support activities should be required to meet these requirements. Given the dramatic shift in placement of students with disabilities in regular classroom settings with the provision of appropriate supports, instructional paraprofessionals will increasingly be used to assist teachers by providing support to students with disabilities. Given the increased demands placed on instructional aides, it is critical they possess the knowledge, skills and abilities essential to meet the needs of the students they assist. This effort is consistent with changes made by the Board to teacher preparation and certification programs and continuing professional education requirements for teachers which requires considerable emphasis on ensuring teachers can meet the instructional needs of students with disabilities (see 22 Pa Code Chapter 49).

Numerous comments were received regarding the proposed qualifications for educational paraprofessionals. In response the Board has added a definition of instructional paraprofessional and personal care assistant. The qualifications for instructional paraprofessionals are revised. Beginning in July 2010 they require instructional paraprofessionals meet one of the following: 1) Associates Degree or 2) completed two years of college or 3) show evidence of mastery of concepts through a State or local assessment. These are similar to requirements for instructional paraprofessionals funded through Title I and classroom aides working in prekindergarten programs. Personal care assistants do not need to meet these qualifications. However, the provision does add a requirement that paraprofessionals and personal care assistants complete twenty hours of continuing professional education annually.

Since paraprofessionals do not require state certification or registration and school districts provide their own job titles and range of responsibility it is not possible to determine the eligible supply of individuals to serve this role. However, we can share our

observations about the experience when, through NCLB the federal government required paraprofessionals working in Title I funded positions to meet similar qualifications. Through training and various other supports provided by school districts, through the intermediate units and other statewide education organizations there was relatively little disruption caused by the policy change. We anticipate a similar experience with this provision and given the previous experience with NCLB requirements the transition should be less of a challenge than the previous experiences.

The Board believes that since it, together with the Department of Education, has been discussing this proposal over the past year and a half and given that other instructional paraprofessionals and aides (Title I and prekindergarten) have already or are in process to meet similar requirements the professional development, training, testing and designation system already exists to assist instructional paraprofessionals who work with students with disabilities to meet these requirements. Given the infrastructure and systems are already in place, the Board believes the 2010 timeframe is realistic and provides sufficient time for paraprofessionals, schools and intermediate units to prepare instructional paraprofessionals to meet these requirements. Instructional paraprofessionals may retake the assessment as often as necessary to pass the assessment.

#### **(b) Educational Interpreters**

Comments received about the proposed qualifications for educational interpreters include: training should be on school time and free of charge; regulation should add qualifications for Communication Access Realtime (CART) translation providers; staffing will be extremely difficult; raise EIPA requirements to 4.0, require a college degree; EIPA should be based on the grade in which the interpreter is interpreting; currently schools do not properly prepare deaf students for independence and employment; the EIPA score of 3.5 is fine, but suggest that those who have not reached 3.5 be allowed to continue working until they pass the test; who will be around to take our place if you fire us; should require a 4.0 on EIPA, written exam, 20 professional development annually, associate or bachelor degree over time and include a definition of educational interpreter based on function; no renewals of extensions should be offered to new interpreters; timeline for perspective interpreters should be 2009 instead of July 1, 2008 because Bloomsburg ITP graduating class... should provide them one year to prepare and take EIPA; the 3.5 on EIPA is a good start but it should be raised to 4.0 over time; need to be assured that 20 hours of training is available; proposal will only drive more interpreters out of the schools; how did the Board determine that 3.5 is appropriate; what will be the effect on availability of interpreters; what about CART qualifications; consider lowering the score to 3.0 and raising it after interpreters are employed for a certain period of time; and, provide training from PaTTAN during the day.

#### **Response:**

Numerous comments were received about the proposed qualifications established for Educational Interpreters. The Board has maintained the requirement contained in the proposed regulation that a minimum score of 3.5 on the Educational Interpreter

Assessment (EIPA) or that qualified educational interpreters be a qualified interpreter under the Sign Language Interpreter and Transliterater Registration Act. CART is not addressed in the Act. In addition, the proposed requirement that educational interpreters provide evidence of 20 hours of professional development related to interpreting each year has been retained. The Board believes this policy is a sound starting point that will provide for a reasonable level of quality while ensuring that students in need of interpretation services have staff available to provide them. The Department of Education conducted a survey of current educational interpreters and found that about two-thirds already have met the 3.5 standard. The Department and intermediate units have been offering professional education opportunities to assist those who have yet to meet the new standard. The Board will, in consultation with the Department, review the EIPA (3.5) every 2 years to determine if a revision is necessary.

### **(c) Caseload**

The comments received regarding proposed caseload requirements varied considerably with one side stating the numbers are too high with the other stating they are too low. A sample of the comments include: If you keep “65” for speech, then make it student contacts rather than students on caseload; level II caseload should be 20; should reduce the chart to three levels with Level I at 50, Level II at 25 and Level III at 8-15; Level II caseload of 25 is too high; Level I caseload should be 40; Level II and III caseload requirements should be 15; Level I caseload is too high it should be reduced to 40; Level IV should be 8-15; 35 should be maximum caseload for both itinerant and resources; speech/language caseload should be 50 and Level II capped at 20; and, a speech formula based on population being serviced by therapist is a better way to go.

Other comments include: need class size limits too; APSs should be required to follow caseload requirements; proposed chart is too open to interpretation; formatting is weird; ensure caseload number deals with case management and not the number of students the teacher teaches; this paradigm shift effects resources, promotes inclusive practices and SAS; and, the proposed language fails to provide flexibility.

Others commented that the proposed regulation will have serious fiscal implications for school districts. These include: Level IV, as proposed, has devastating fiscal consequences (Rose Tree Media SD \$258,000 salaries and benefits and \$45,000 for classroom equipment and supplies, draconian financial repercussions would cost IU 24 \$2.5 million; proposed caseload maximums would double their elementary and high school caseloads and nearly double it at middle school; life skills support definition is too ambiguous and result in higher numbers here; and, the proposed regulations will require more staff and more space.

Other comments suggest ways to clarify the new requirements including: provide examples of how to figure out caseloads; change the wording but retain the current chart; clarify if mixed categorical caseloads are now the preference; and, restore type and level of intervention.

**Response:**

A considerable number of comments were received in opposition to the proposed caseload requirements. Concerns were voiced that the new regulations would increase staffing requirements in some cases, and decrease staffing in other areas. Others indicated that there was too much flexibility while others argued the opposite.

A considerable number of comments were made relating to the proposed caseload requirements. The regulation has been rewritten to add clarity as to the maximum number of students on a teacher's caseload based upon the category of disability and level of support provided. The types of services remain unchanged. The percentage of time a student receives specialized services has been changed and the categories of resource and part-time are combined and replaced under the new category named *supplemental*. The regulation also clarifies that special education services can be provided in a specialized setting, regular setting or other settings as appropriate and specified by the IEP. The revised caseloads closely resemble current requirements and should not impose any new costs to school entities.

**§ 14.106. Access to instructional materials.**

Comments received in response to the proposed regulation include: the language in (b) is vague. Subsections a, b, c and d use the word *timely*. The word *timely* should be replaced with clear time requirements. In addition, subsections (c) and (e) use the term *reasonable steps* which is vague.

**Response:**

Section (b) has been edited to add clarity. Subsection (c) provides a standard of timeliness for the word *timely* as used in this section. The term *reasonable* has been deleted.

**§ 14.107. Complaint procedure.**

Comments received regarding this section include: the complaint process should be promulgated by the Department as a Standard and not adopted as a BEC, which does not afford stakeholders an opportunity for comment and review; we believe IDEA requires the State to adopt written procedures for resolving a complaint; the process of investigation and manner of reconsideration are not uniform; the investigation process is flawed; the regulations are required to address requirements to determine sufficiency, the method and scope of investigation, a district's obligation to present witnesses, a district employee's right to have union representation and confidentiality procedures, etc.; and, the regulation should indicate to whom the notice will be disseminated.

**Response:**

IDEA has required states to have complaint procedures for decades. The Department has complied with this federal requirement by developing and making its procedure available to parents and others. It has been and will continue to be available on the Department's web site. The regulation formally recognizes the Department's process.. It is unnecessary for the Board to repeat or duplicate the requirements addressed in the federal regulations. Confidentiality requirements already exist under the federal Family Educational Rights and Privacy Act (FERPA) and need not be addressed in these regulations. This regulation is not the appropriate place to address a district's right to have union representation.

**§ 14.108. Access to classrooms.**

Comments received about this section include: the regulation should provide families and their experts access to current and proposed classrooms; this provision fringes on the violation of other children's rights under FERPA (Federal Educational Rights and Privacy Act); this provision should be addressed in Chapter 4, addressing access for parents of any student, regardless of disability, rather than in Chapter 14 where it only covers the parents of students with disabilities; the term "reasonable access" should be clarified; and we encourage the Board to go further by providing parents and family experts access to their child's current and proposed classroom, while ensuring school and classroom safety and functioning.

**Response:**

The Board believes it is necessary to balance the interest of the parent to visit classrooms against the responsibility of the school to preserve a safe, orderly and uninterrupted learning environment. The Board believes school administration should determine when and where it is appropriate for parents or advocates to visit their classrooms to either observe their child in their existing setting or to visit potential educational settings to assist in their determination whether the setting is appropriate to address their child's needs. Given that each individual student's situation, school and program of services will vary, the Board believes that access should be addressed by local policy. The Board believes the use of the term *reasonable* is appropriate in this instance given the considerable differences in both the physical layout and educational programming of schools in addition to the variety of student supports and interventions given the nature of each student's disability.

**§ 14.121. Child find.**

A comment was received suggesting that parents be alerted ASAP to make them fully aware of intervention strategies and full continuum of educational options.

**Response:**

New language added to subsection (b) requires school districts to publish information in the school district handbook and on the school district website. In addition, the provision requires school districts to conduct public awareness activities.

**§ 14.122. Screening.**

Comments received about this section include: RTI may last too long and deny students access to special education; there is no quality control on RTI; there are 501 different methods used to implement RTI; and, the Board should specify what constitutes *appropriate instruction in math*, more clearly, specify what interventions are acceptable and clarify what is meant by *systematic observation*. Subsection (c)(4) uses the term *research-based intervention*. The regulation should more clearly specify what interventions are acceptable.

**Response:**

Response To Intervention (RTI) may not serve to delay evaluation for special education services at a parent's request. Educators and parents working in partnership are better able to determine the length and methods to be used in RTI that can or should be addressed through regulation. The Department will provide training, technical assistance and guidance to school districts on RTI. In addition, the Department will review compliance in implementing RTI during its cyclical monitoring of school districts.

A determination as to whether the student receives appropriate instruction in math (and reading) is one of the elements included when screening students to determine whether they may have a disability. The intent is that if a student was not afforded instruction and the support necessary to meet the state and district requirements how would a student be able to perform at grade level or meet state standards? This provision ensures that a review of the instruction that a student receives takes place.

*Research-based intervention* is a widely used term in special education that is referenced in both federal law and regulations. The U.S. Department of Education provides guidance as to programs that qualify to meet the standard. *Systematic observation* is also a term of art commonly used by educators in special education and therefore is not necessary to further clarify.

**§ 14.123. Evaluation.**

The following comments were received: teachers should be able to demand evaluations; we like the wording on verbal evaluation requests; there are too many professionals in the schools who are not employees of SD or IU; this language is too broad and unrealistic to implement; what constitutes an "oral" request must be spelled out; currently no "evaluation request form" exists; form should be provided within 5 days of oral request; evaluations for students with reading difficulties and language difficulties

should be expedited; there is no assurance of parental notification or requirement to provide parents with their legal rights; change to 60 calendar days – with 60 school days PA ranks 50th among the states on evaluation timelines; keep 60 school days; add to (a) that if student is thought to be gifted, he/she will be evaluated for that; allow for alternate gifted oriented tests or indexes; in subsection (e) allow for free IEE for gifted; designate who has responsibility for providing the form within the school; we request the Board adopt a 60 calendar day timeline for evaluations and other IDEA related deadlines.

**Response:**

There was a significant amount of testimony received on the evaluation and re-evaluation timetables, indicating the current maximum timeline is too long and is detrimental to students. Current regulations provide for a 60 school day maximum. Under final form regulations there will be a change in the evaluation and re-evaluation timetables to 60 calendar days with the exception of summer months.

The regulation clarifies that when a parent makes a verbal request for an evaluation or reevaluation of their child the school must provide the parent with a Permission to Evaluate/Reevaluate Form within ten calendar days. Teachers may request evaluations but ultimately the authority to do so rests with the parent and school entity.

There were a considerable number of comments concerning the maximum number of days a school may complete their evaluation or reevaluation of a student based on a parent request. The Board reduced the current requirement of 60 school days to 60 calendar days, with the summer vacation period excluded. The Board believes this change is reasonable and appropriate given the 60 school day requirement allows for up to one-third of the school year to elapse from the date the parent submits the Permission to Evaluate or Reevaluate Form. In addition, the 60 school day requirement is one of the longest permitted of the 50 states.

The Board believes that establishing a requirement that evaluations be expedited for students having difficulty with reading or language is unnecessary. Students who may be eligible for services under Chapter 16 in addition to Chapter 14 will be evaluated for eligibility for gifted education through procedures outlined in Chapter 16. The terms *professional employee* and *administrators* are commonly understood terms used in schools and therefore definition is unnecessary.

**§ 14.124. Reevaluation.**

A comment suggests that when a student is thought to be dually exceptional, the school psychologist should assess for giftedness; and, the term *reasonable efforts* as it relates to parental consent should be defined.



**Response:**

Proposed revisions to Chapter 16 (special education for gifted students) provides for a combined IEP for dually exceptional students. Reevaluation of these students will take place under the requirements under both chapters. The term *reasonable efforts* has been deleted.

**§ 14.125. Criteria for the determination of specific learning disabilities.**

Comments received on this section include: require psychologists to be involved as part of RTI process; we like the options for determining specific learning disability; regulation must include timelines for RTI; RTI can only be one component in identification process; abuse possible in multiple tiers; RTI cannot be a replacement for special education; state of RTI isn't well founded enough; RTI has not be found to be successful in helping students with LD; what oversight and quality control of RTI will there be and the term "timely manner" should be replaced with clear time requirements; and, should define who meets the standard of "qualified personnel" in (a)(4)(i).

**Response:**

School psychologists are part of the evaluation and reevaluation process under both these and the federal regulations. A school may choose to include school psychologists as part of the RTI process. School districts are given the option to continue to use the severe discrepancy model or the RTI model under these regulations. The RTI model is sufficiently addressed in this section. The term *qualified personnel* is widely understand by school personnel as having appropriate certification to provide services to students. The Department will review school district implementation of these models when it conducts its compliance reviews of school districts.

**§ 14.131. IEP.**

Comments received include: teachers must get copies of any amendments to the IEP; should require the LEA representative to be an administrator; do not require LEA representative to be an administrator; keep the prohibition against excusal of the LEA representative from IEP meeting; we like the requirement for a communication plan as part of IEP and suggests adding literacy and academic content to requirements; add a comma between "communication" and "accessing" in the first sentence under Section 14.131(a)(1)(iii); educational placement is already done at administrative convenience for most children with traumatic brain injury in PA; many do not benefit from placement in LS or ES; and, we urge the Board to consider adding gifted support to the services provided in the IEP to ensure that the needs of gifted, learning disabled students or any gifted student with dual exceptionality will have their gifted needs addressed.

**Response:**

Language was added to clarify that special education supports and services can be delivered in the regular classroom and other settings as determined by the IEP team. IDEA regulations require teachers who work directly with students be notified of any amendments made to a student's IEP. There is no prohibition against a school providing teachers with copies of IEP amendments as long as FERPA requirements are followed. IDEA sets forth qualifications for the LEA representative and the Board believes these requirements are sufficient. The proposed language that would prohibit excusing the LEA representative from the IEP meeting was deleted because the provision was contrary to federal provisions that provide parents the right to waive such attendance. Language regarding the communication plan is sufficient. Educational placement decisions are a matter for discussion by the IEP team in conformity with federal and state requirements. Any disputes based on placement decisions are a matter for due process. Gifted education requirements are addressed in Chapter 16.

**§ 14.132. ESY.**

Require ESY services be consistent with all IEP goals and allow for social and recreational experiences with non-disabled peers to the fullest extent appropriate. Amend (a) as follows: *...school entities must use the following standards for determining whether a student with disabilities and an eligible young child ...*; Consider for ESY purposes the amount of absenteeism caused by the disability; subsection (d)(1) requires parent notification but does not specify when the notice must be provided by; the term *ensure parent participation* is not appropriate; and, the term *timely manner* should be replaced with a clear time frame.

**Response:**

ESY services for school-age students are sufficiently addressed in this section. ESY does not apply to eligible young children because there is no school year to extend in early intervention programs. Services for eligible young children over break periods are addressed in the early intervention section of this chapter.

**§ 14.133. Behavior support.**

A considerable number of comments were received about proposed revisions to this section. They include: proposed language on use of restraints is worse than draft language and is a threat to the safety and well-being of students with disabilities; remove the time element in definition of restraint (30 consecutive seconds); entitle this section of the regulation "Positive Behavior Support;" restraints built into the students' IEPs must include type and amount of restraint, who will administer, training, monitoring technique, and plan for eliminating use of restraint; continue to require an IEP meeting any time a restraint is used, unless the parent, after written notice, agrees in writing to waive the meeting; we liked the wording that requires holding a meeting within "10 days" that appeared in draft regulations; remove the wording "determined necessary by a physician

...” with regard to restraints preferably, but if it must be retained, make it at the direction of the child’s primary care physician; need to insert specific requirements on reporting data or should delete the requirement; any reported data should not be shared with the public; delete the requirement for an IEP meeting any time student causes an injury; define injury if you are going to use it as “a non-accidental injury requiring treatment above or beyond standard first aid.”and it should not include “incidental marks;” need to define “medical personnel;” and, recommend APSs not be required to hold IEP meetings under these circumstances and suggests that APSs set up their own policy.

Other comments include: oppose almost any use of restraint; if other institutions don’t permit the use of restraints, schools shouldn’t either; we are particularly troubled by “30-second” definition; teachers should be required to take (graduate-level) training on the biological basis of behaviors, behavior management, behavioral crisis defusing and modification regimens; prohibit use of all restraints; prohibit use of restraints as a behavior modification technique; only allow restraints in the case of injury to another; define “clear and present danger;” clarify the meaning of “less restrictive measures;” restraint of hands/arms will render deaf child non-communicative; include a requirement that school personnel who find themselves involved in the use of a prone restraint as the result of responding to an emergency must take immediate steps to end the prone restraint; do not build the use of restraints into the IEP; IEP should list what steps need to be taken if restraint is used and doesn’t work; parents should be given option to meet every time a restraint is used; do not expand upon requirements in IDEA; needs clarity regarding non-accidental injury; data should be used for monitoring purposes and the evaluation of trends; is picking up a 3-year old to carry them somewhere a restraint if it lasts longer than 30 seconds; language in subsection (a) should be changed to say “students with disabilities;” define “demeaning treatment;” positive techniques needs a better definition; subsection (c)(1) is too confusing; and, the term “positive techniques” should be rewritten for clarity.

IRRC’s comments include: the Board needs to provide an overall explanation of restraints and how the use of restraints as described in the regulation meets the criteria of protection of the public health, safety and welfare; need; and reasonableness. IRRC suggests the definition of positive techniques lacks clarity and should be rewritten. IRRC further questioned the “30-second” rule as unenforceable and impractical. IRRC further questions the use of the word “should” in subsection (c)(1) relating to parental consent and the need to note the need for restrictive procedures in a student’s IEP. IRRC also comments on the regulatory provisions regarding prone restraints. First it questions whether a school can prohibit the use of prone restraints even when the regulatory criteria for its use are met. IRRC also questions how a student’s health, safety and welfare would be adequately protected by staff of the school entity; and, why doesn’t the regulation require a determination that restraint is necessary from the student’s personal physician?

The House Education Committee commented that it urges the Board to consider removing the 30 second restraint provision from the regulation. Conversely the Alliance of Approved Private Schools indicated that in some instances prone restraints may be the most suitable method to restrain a child, but should only be conducted by a trained team

who has received training and ongoing competency in the restraint technique used. The Committee strongly encourages the Board to consider those circumstances outlined by the APS Alliance.

**Response:**

A significant amount of testimony was received on this section. In general, those providing testimony preferred the language from the March 2007 draft regulations over that in the proposed regulations. There was concern that there were not sufficient protections in the proposed regulations regarding use of restraints, there is a need to focus on positive approaches. A number of individuals testified against the “30 second” rule.

The following changes were made to final form: (1) Emphasis on positive approaches to behavior support as the basis of students’ programs, (2) Restraints are defined in such a way as to distinguish them from calming, comforting or guiding gestures and the “30 second” rule was deleted; (3) Restraints are to be used only as a measure of last resort; (4) Prone restraint is prohibited, since its use has caused deaths due to restricting the breathing of the individual being restrained; (5) restraints may not be used in preschool. Early Intervention programs – current regulations do not specifically include preschool Early Intervention in the protections; and, (6) restraints may only be used with positive measures designed to improve student behavior. In addition, schools must notify parents when a restraint is used and an IEP meeting held, unless the parent waives the meeting in writing. IEPs will include positive behavior support plans, when student behavior is an issue for the IEP team.

The Board inserted the word *positive* in the title of the section to reflect the intent and focus of the new provisions. This section has undergone extensive revision given the considerable number of comments and input received. Eligible young children receiving services through Early Intervention Services are now included in the protections provided in this section. The new provisions require that behavior support programs and plans be based on a functional assessment of behavior. Restraints are only to be considered as a measure of last resort, only after other less restrictive measures have been used. New provisions are added regarding positive behavior support plans. It adds a definition of restraints and provides that when restraints are used the school entity must notify the parent and have the IEP team meet within 10 school days unless the parent waives the need for a meeting. The revised provision also establishes criteria as to when the use of restraints may be included in a student’s or eligible young child’s IEP. Finally, the revised language provides that subsequent to a referral to law enforcement for those who already have a positive behavior support plan that an updated functional behavior assessment be performed and the plan updated.

**§ 14.143. Disciplinary placements.**

Comments received include: define a change of placement as per IDEA and nothing more; subsection (b) suggests changing the language since PARC Consent Decrees predate IDEA; nothing in consent decree defines a suspension to constitute a

change in placement; term of disciplinary placement can be defined by reference to federal law as 10 days.

**Response:**

The Board believes the regulation is appropriate as written which merely updates language to reflect new federal provisions. The language in this section remains largely unchanged from state requirements in force over the past decade.

**§ 14.145. Least restrictive environment requirements.**

Comments received include: do not expand LRE requirements from IDEA instead adopt language suggested by PSBA; like the inclusion of Oberti and Girty standards in proposed regulations; the proposed LRE regulations in no way exceed minimum legal requirements...simply clarify, emphasize and make pre-existing mandates accessible; language in (a)(2) is not clear; explain why didn't use word "appropriate" as contained in IDEA; the Board should explain who makes the determination that a student can make progress, with supplementary aids and services and how that progress will be evaluated; this provision could be interpreted to allow minimal progress in an IEP to be used as justification to keep a student in a regular education classroom; the proposed regulation should be amended to state that placements with non-disabled peers should be made to the maximum extent appropriate; without revising the language regarding placement in a regular classroom may violate IDEA by allowing children to remain in regular classrooms when it is evident that they are making no progress.

**Response:**

A number of individuals testified that this section, as it appeared in the proposed regulations exceeds IDEA and current case law. This section was amended to more closely reflect IDEA, and utilizes the term *to the maximum extent appropriate* used in IDEA.

**§ 14.146. Age range of restrictions.**

Comments include: the use of the term *specialized settings* needs to be defined and the regulation should be revised to allow school districts to request PDE's approval of the defined criteria to be applied by the IEP team to permit exceptions.

**Response:**

The provision regarding age restrictions remains largely the same as it has for more than a decade. The Board believes that changes are unnecessary.

### **§ 14.153. Evaluation.**

A comment suggests that the language is very confusing where it says “Notwithstanding the requirements...” and suggests that it be clarified. Another comment suggests that the current allowance for re-evaluation after 10 days be retained.

#### **Response:**

Revisions were made to clarify the requirements of this section. The time lines are appropriate and are aligned with the requirements for the evaluation and reevaluation of school age students.

### **§ 14.155. Range of services.**

Comments about this section include: IDEA does not grant pendency rights in the transition within Part C or from Part C to Part B programs; the State Board of Education has authority to establish state policy that does not have stay-put requirements; Pardini is no longer controlling of state regulations and should not be applied to expand the federal stay-put requirements; as proposed – this is a significant unfunded mandate; good policy reasons support children receiving services under Part C to stay put when they become older and are eligible to move into a different array of programs; add “non-licensed” after licensed when speaking about agencies under DPW; caseload for EI Classroom teachers is very confusing; PDE is obligated to revise its regulations to ensure that preschoolers eligible for ESY are served; subsection (c) creates a problematic standard; it should just apply generic ESY regulations--preschoolers must “lose skills over breaks” and that loss must be “evidenced through child performance data”; the definition of EI Classroom as written is undecipherable; caseload should be 10-40 rather than 20-40 because in many suburban and rural districts, travel and geography would make a minimum of 20 problematic; and, with the location of brackets, it is hard to determine what is to be deleted in the proposed regulations.

#### **Response:**

The caseload provision for early intervention services is to be based on the basis of the amount of time required to fulfill eligible young children’s IEP. Class size may have up to six young children up to a maximum of 11 if one additional teacher or paraprofessional is assigned to the classroom. Language is added to ensure that preschoolers who need early intervention services during breaks will be provided such services with support if the breaks exceed three weeks. Changing caseload requirements from 20-40 to 10-40 was determined to be unnecessary. Edit marks (brackets) to this section have been corrected.

### **§ 14.162. Impartial due process hearing and expedited due process hearing.**

Extensive comment was received regarding the quality of the existing due process hearing and appeals system. Most comments suggested eliminating the appeals panel.

Comments include: support the overhaul of hearing system into a one-tier model with extensively trained ALJs; in the interim; fixed appellate panels create perception of bias; should create new operating procedures; should rotate members on appeals panels; should require appropriate experience by hearing officers; suggest a review of all decisions; suggest that concurrence by some minimum number of panel members or a review officer; need to insure uniformity of decisions; any services ordered by a hearing officer or contained in an agreement approved by a hearing officer are costs that result from an administrative order for Act 1 purposes; should resolve disputes in quickest way possible and offer 3 different options: (1) Permit enforcement of mediation and dispute resolution agreements through Division of Compliance; (2) Restore optional pre-hearing conference; (3) Align the statutes of limitation for filing a complaint with DOC and for filing for a due process hearing; provide families timely and free copies of their child's education records; any parental waiver of rights should require informed consent; establish certain qualifications for both hearing officers and appellate officers; require that hearing officers undergo training before commencing their work and that they have annual continuing education; require that appeal panels treat as precedential, decisions of previous panels, Commonwealth Court, PA Supreme Court, 3rd Circuit, and Supreme Court; require that the composition of appellate panels rotate from case to case; clarify placement by adding "regular education environment" when referring to other placements on the continuum; remove appeals panels; institute a truly independent Office of Dispute Resolution; need increased oversight; we are split on issue of the appeals panel; forbid practice of fixed panels; should require a majority of members to sign off on decisions; should establish qualifications of members by regulation; require annual training requirements at certain levels; peer review of decisions and conduct; strengthen qualifications, objectivity and continuing education of hearing officers; require clearly articulated standards of conduct by hearing officers; consider eliminating appeals panels; The Office of Dispute Resolution should be an independent and separate operating unit within PDE;

**Response:**

There was a high volume of testimony and comment regarding due process hearings, the Office of Dispute Resolution, burden of proof, and the second tier due process Appeals Panel. The March 2007 Draft regulations deleted the Appeals Panel – the second tier, and the proposed regulations, May 2007 restored the second tier. Nearly every commentator addressed the issue of due process hearings and the appeal panels. There was near universal support for the elimination of the two-tier system. The Board determined it was in the best interest of all parties to eliminate the use of the appeal panels and to strengthen the first level hearings process.

The final form regulation removes the second tier Appeals Panels. As a result the due process hearing will serve as the local and state level hearing for hearings regarding school age students with disabilities. This system has been in place for preschool Early Intervention. State Board Regulations do not address burden of proof, as that is a matter not within the purview of the Board.

Several comments were made that the Office of Dispute Resolution should become an independent entity, that certain levels of training be required for due process hearing officers and that oversight of due process procedures and hearing officers be increased. Although these comments were considered, the Board determined it is not appropriate to address them in this regulation.

The Board did include a provision that requires the Department to provide annual reports to the Board so it can monitor the effectiveness of the single tier system.

Access to education records by parents is governed by the federal Family Educational Rights and Privacy Act. The Board believes additional regulation of this issue is not warranted.

### **Miscellaneous Comments:**

General comments received include: do not replicate protections for mental retardation to students with autism; replicate the protections for mental retardation to students with autism (specific language included); apply Ch. 14 to public schools except Charter Schools and also Approved Private Schools; the burden of proof should always be on schools; supports retention of Schaeffer v. Weast burden of persuasion found in IDEA; wants pre-hearing conference to be retained; require that students with disabilities may not be denied access to gifted programming or accelerated or enriched placements; improve assessment techniques for gifted students with disabilities; address needs of dual exceptional students; should address how many IEP students can be placed in the regular education classroom; regulations should require a special education teacher to co-teach with a regular education teacher when regular education class consists of <50% IEP students; in general, we propose that Chapter 14 not exceed the requirements under IDEA; retain terminology in educational placement section and to include in-home instructional support; and, add a section on System of Quality Assurance.

### **Response:**

The Board did not extend the protections for students with mental retardation to students with autism as these protections are not always appropriate. Chapter 14 covers public schools and Approved Private Schools but not charter schools or cyber charter schools as provided in the Public School Code of 1949. The Department's Chapter 711 regulations address the requirements for charter schools and cyber charter schools. Several commentators indicated that the regulations should stipulate that school districts have the burden of proof to demonstrate that appropriate services are provided when disputes develop affecting students with disabilities. The Board believes this issue is best addressed by statute, not regulation. Chapter 16 regulations address eligibility for and the programs and services to be provided to students identified as gifted. The caseload provisions address appropriate student loads for teachers. Pennsylvania has a long tradition of providing high quality services to students with disabilities and where appropriate state requirements exceed those of IDEA. These regulations maintain that principle. The Department of Education, as required by IDEA, conducts a regular process of compliance monitoring to assist districts in improving delivery of services to students



with disabilities. The Department also provides extensive, on-going professional education opportunities for school personnel to build and maintain statewide capacity to provide quality educational services.

# **Title 22—EDUCATION**

## **STATE BOARD OF EDUCATION**

### **[22 PA. CODE CH. 14]**

#### **Special Education Services and Programs**

The State Board of Education (Board) amends Chapter 14 (relating to special education services and programs) to read as set forth in Annex A. Notice of proposed rulemaking was published at 37 Pa.B. 2961 (June 30, 2007).

#### *Statutory Authority*

The Board acts under the authority of sections 1372 and 2603-B of the Public School Code of 1949 (code) (24 P. S. §§ 13-1372 and 26-2603-B).

#### *Background*

This rulemaking establishes procedures for the identification of students who are disabled and in need of special education services and programs. This rulemaking sets forth requirements and procedures for the delivery of those services and programs. As provided in the code, Chapter 14 does not apply to public charter schools or cyber charter schools. Instead these schools must follow the regulations of the Department of Education (Department) in Chapter 711 (relating to charter school services and programs for children with disabilities).

A committee of the Board (committee) held five regional public roundtable meetings during December 2006 and January 2007 where stakeholders were provided the opportunity to share their concerns about special education. The committee then circulated draft regulations and conducted three regional public hearings to solicit public input on the draft regulations in March 2007. Notices of the meetings were distributed to those on the Board's stakeholder list, school district superintendents, intermediate unit executive directors, area vocational technical school directors and others through the Department's PennLINK email system. Legal notices of the hearings were published in regional newspapers, public notice was posted on the Board website, and Sunshine Act notices were posted at the meeting sites. State education groups alerted their members and others about the meetings through e-mail distribution lists, websites and publications.

Throughout the process of drafting the proposed and final rulemaking, the Board prepared and posted updated drafts on the Board's website. The Chapter 14 committee met in public meetings on November 14, 2006, and during 2007 on January 17, March 21, May 16, June 28, September 19, November 1 and November 14. Drafts of both the proposed and final rulemaking were reviewed and discussed at the meetings. Members of the public were provided opportunities to provide comments at these meetings.

Notice of proposed rulemaking was published in the *Pennsylvania Bulletin* on June 30, 2007, at 37 Pa.B. 2961. The Board received comments from 257 individuals and organizations during the 30-day public comment period. In addition, the Board received an additional 53 letters and e-mails after the 30-day public comment period.

The revisions to Chapter 14 are designed to align the chapter with the Individuals With Disabilities Education Act (IDEA) (20 U.S.C.A. §§ 1400—1482), as amended December 3, 2004, related Federal regulations and applicable provisions of Pennsylvania statutes, court decisions and settlement agreements. The Federal regulations are available at <http://idea.ed.gov/explore/home>. The Board also addressed issues raised by stakeholders throughout its public outreach and review process.

The Board determined that many areas in the Federal rules are sufficiently detailed to provide for effective implementation and, therefore, are proposed to be incorporated by reference.

Additional language is found in this proposal when: 1) Federal rules require greater detail for implementation; 2) court decisions or settlement agreements applicable to the Commonwealth require regulation; 3) State statute requires regulation; and 4) the current practice of special education in this Commonwealth requires regulation.

This rulemaking will become part of the eligibility grant application to the United States Department of Education under IDEA ensuring the provision of a free, appropriate public education to students and children with disabilities. The Commonwealth must demonstrate a good faith effort to align its policies with IDEA and its implementing regulations to be eligible to receive Federal funds. Copies of the eligibility grant application will be made available to the public through the Department.

#### *Summary of Public Comments and Responses to Proposed Rulemaking*

The proposed rulemaking was published in the *Pennsylvania Bulletin* at 37 Pa.B. 2961 and was available on the Department's website at [www.pde.state.pa.us](http://www.pde.state.pa.us). The Board accepted formal written comments during a 30-day public comment period that began upon publication of the proposed rulemaking. The Senate Education Committee held a hearing on September 18, 2007, and the House Education Committee held hearings on September 27, 2007, and October 31, 2007. The Board also discussed the proposed rulemaking with numerous individuals, education groups and individual members of the General Assembly.

The Board received written comments directly from 257 individuals and organizations during the 30-day public comment period. An additional 53 comments were received after comment period. Rather than provide a lengthy listing of the organizations and comments and responses in the preamble, the Board prepared a separate document that outlines the comments and the Board's response. This document was sent to each commentator and is posted on the Board's web page on the Department website.

A summary of substantive changes is provided as follows:

*§ 14.101 Definitions.*

A definition of Educational Interpreter is added.

*§ 14.102 Purpose*

The reference to 34 CFR 300.160 (relating to participation in assessments) is added to the list of Federal regulations that are adopted by reference. The reference was left out of the proposed regulation through an oversight.

*§ 14.103 Terminology related to Federal regulations.*

Several comments were received that suggested that 34 CFR 300.518 be adopted by reference. The U.S. Court of Appeals for the Third Circuit issued a ruling in *Pardini v. Allegheny Intermediate Unit*, 420 F.3<sup>rd</sup> 181 (3<sup>rd</sup> Cir. 2005), cert. denied, 547 U.S. 1050 (2006) which conflicts with the Federal regulation. The Commonwealth must adhere to the ruling of the Federal court that has jurisdiction over the Commonwealth and its political subdivisions.

*§ 14.105 Personnel.*

Numerous comments were received regarding the proposed qualifications for educational paraprofessionals. In response, the Board has added a definition of instructional paraprofessional and personal care assistant. The qualifications for instructional paraprofessionals are revised to, beginning in July 2010, require they meet one of the following: 1) Associates Degree; or 2) completed two years of college; or 3) show evidence of mastery of concepts through a State or local assessment. The provision also adds a requirement that paraprofessionals and personal care assistants complete twenty hours of continuing professional education annually.

Numerous comments were also received about the qualifications established for Educational Interpreters. Act 92 of 2006 designated the Board with the responsibility to define qualifications for educational interpreters. Final form regulations include a definition of Educational Interpreter; and they establish qualifications for educational interpreters to either provide evidence of a minimum score of 3.5 on the Educational Interpreter Assessment (EIPA), or be a qualified educational interpreter or qualified transliterator under the Sign Language Interpreter and Transliterator Registration Act. It should be noted that extensive professional development has been provided by the Department for the past several years to assist individuals serving as educational interpreters to improve their skills, and meet pending qualifications.

The Board, in consultation with the Department, will review the EIPA score requirement every two years. Educational Interpreters shall also annually provide evidence of 20 hours of staff development related to interpreting.

The Board believes this standard provides a realistic balance to ensure that quality educational interpreter services are available to students across the Commonwealth who need them.

A considerable number of comments were made relating to the proposed caseload requirements. Final form regulations include caseload language and a chart that closely follows § 14.142 caseload requirements in the current regulations, and continues to provide requirements as to the maximum number of students on a teacher's caseload. The term caseload continues to refer to the number of students whose IEP the teacher oversees. This is consistent with the manner in which the term caseload has been interpreted in the past.

The types of service (*e.g.*, learning support, autistic support, life skills support, etc.) remain the same. Changes include specific percentages (of time the student receives specialized instruction) to define itinerant and full time services. The terms "Resource" and "Part-time" are replaced with one term, "Supplemental." This change was made because the language used for these terms in the current regulation is vague, subject to various interpretations and is tied to location of services provided to students.

Final form language clarifies that special education services can be provided in a specialized setting (*e.g.*, special education classroom) and can also be provided within the regular education classroom and other settings, as appropriate as specified by the IEP.

*§ 14.123 Evaluation; § 14.124 Reevaluation.*

The regulation clarifies that when a parent makes a verbal request for an evaluation or reevaluation of their child the school must provide the parent with a Permission to Evaluate/Reevaluate Form within ten calendar days.

There were a considerable number of comments concerning the maximum number of days a school may complete their evaluation or reevaluation of a student based on a parent request. The Board reduced the current requirement of 60 school days to 60 calendar days, with the summer vacation period excluded. The Board believes this change is reasonable and appropriate given the 60 school day requirement allows for up to one-third of the school year to elapse from the date the parent submits the Permission to Evaluate or Reevaluate Form. In addition, the 60 school day requirement is one of the longest permitted of the 50 states.

*§ 14.133 Positive behavior support.*

A significant number of comments were received on this section. Many commentators expressed a preference for the draft language contained in the March 2007 draft regulations over that in the proposed regulations. In these final form regulations, the Board inserted the word *positive* in the title of the section to reflect the intent and focus of the new provisions. Eligible young children receiving services through Early Intervention Services are now included in the protections provided in this section. The

new provisions require that behavior support programs and plans be based on a functional assessment of behavior. Restraints are only to be considered as a measure of last resort, only after other less restrictive measures have been used. New provisions are added regarding positive behavior support plans. It adds a definition of restraints and provides that when restraints are used the school entity must notify the parent and have the IEP team meet within 10 school days unless the parent waives the need for a meeting. The revised provision also establishes criteria as to when the use of restraints may be included in a student's or eligible young child's IEP. Finally, the revised language provides that subsequent to a referral to law enforcement for those who already have a positive behavior support plan that an updated functional behavior assessment be performed and the plan updated.

*§ 14.155 Range of Services.*

The caseload provision for early intervention services is to be based on the basis of the amount of time required to fulfill eligible young children's IEP. Class size may have up to six young children up to a maximum of 11 if one additional teacher or paraprofessional is assigned to the classroom.

*§ 14.162 Impartial due process hearing and expedited due process hearing.*

Nearly every commentator addressed the issue of due process hearings and the appeal panels. There was near universal support for the elimination of the two-tier system. The Board determined it was in the best interest of all parties to eliminate the use of the appeal panels and to strengthen the first level hearings process. The Board included provisions that require the Department to provide annual reports to the Board so it can monitor the effectiveness of the single tier system.

*Fiscal Impact and Paperwork Requirements*

As the current two-tier system for due process hearings and appeals transitions to a single level system over the next two years, schools will save approximately \$958,855 annually. The responsibility for the cost of hearing officers, transcripts, travel and related administrative costs will shift from local school entities to become that of the Department of Education. With elimination of the appeals panels, the Department will save approximately \$251,000 annually in hearing officer, transcription services, travel and related costs.

With a reduction in the timeframe for completion of evaluations and reevaluations from 60 school days to 60 calendar days, it is estimated that 10 to 20 additional school psychologists will be needed statewide to complete the evaluations by the deadline in school entities with a high percentage of students with disabilities. With average salary/benefit costs of approximately \$75,000, the cost to school entities will total approximately \$1,125,000.

The Department will receive savings from the elimination of appeals panel system. The Department will save approximately \$251,000 annually once all the appeals filed before the effective date of this regulation are addressed by the panels. However, with the elimination of the appeals panels the Department assumes responsibility for the costs associated with the first-level due process hearings which include the cost of hearing officers, court reporters, travel and related costs which were previously paid by local school entities. When the appeals panel system is eliminated the single-level system will cost the Department approximately \$976,000 annually.

The rulemaking requires that the Department report annually to the Board on the activities and results of due process hearings. Since the Department already collects this information, the cost of generating the annual report to the Board is minimal.

The rulemaking adds a requirement that school entities maintain data on the use of restraints. This data will be reviewed as part of existing compliance reviews conducted by the Department. The cost to implement and administer this new requirement is minimal.

Requirements for the access to instructional materials as required by IDEA are added. The resource center is funded by the Federal government.

Under this rulemaking, educational interpreters providing services to students who are deaf or hearing impaired employed by intermediate units and school districts need to meet the qualification of scoring a 3.5 or above on the Educational Interpreter Performance Assessment and participate in at least 20 hours of continuing professional education in interpreting or transliterating services each year to continue to provide education interpreting services to students. A number of intermediate units and the Pennsylvania Training and Technical Assistance network provide training at no or relatively small cost to educational interpreters to assist them in meeting these requirements.

#### *Effective Date*

The final-form rulemaking will become effective on July 1, 2008.

#### *Sunset Date*

In accordance with its policy and practice regarding regulations, the Board will review the effectiveness of these regulations after 4 years. Therefore, no sunset date is necessary.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 19, 2007, the Board submitted a copy of the notice of proposed rulemaking, published at 37

Pa.B. 2961, to IRRC and the Chairpersons of the House and Senate Committees on Education for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on \_\_\_\_\_, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on \_\_\_\_\_, and approved the final-form rulemaking.

#### *Contact Person*

The official responsible for information on this final-form rulemaking is Jim Buckheit, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 787-3787, TDD (717) 787-7367.

#### *Findings*

The Board finds that:

(1) Public notice of the intention to adopt this final-form rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The final-form rulemaking is necessary and appropriate for the administration of the code.

#### *Order*

The Board, acting under authorizing statute, orders that:

(a) The regulations of the Board, 22 Pa. Code Chapter 14, are amended by amending §§ 14.107, 14.108, 14.121, 14.125, 14.141, 14.142, 14.143, 14.146, 14.151, 14.161 and 14.163 to read as set forth at 37 Pa.B. 2961, by amending §§ 14.101, 14.102, 14.103, 14.104, 14.105, 14.106, 14.122, 14.123, 14.124, 14.131, 14.132, 14.133, 14.145, 14.153, 14.154, 14.155 and 14.162 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.



(b) The Executive Director will submit this order, 37 Pa.B. 2961 and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law.

(c) The Executive Director of the Board shall certify this order, 37 Pa.B. 2961 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order is effective upon publication in the *Pennsylvania Bulletin*.

Jim Buckheit,  
Executive Director

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subpart A. MISCELLANEOUS PROVISIONS

CHAPTER 14. SPECIAL EDUCATION SERVICES AND PROGRAMS

GENERAL PROVISIONS

§ 14.101. Definitions.

In addition to the definitions in §§ 14.102 and 14.103 (relating to purposes; and terminology related to Federal regulations), the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

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*Agency*—~~[An intermediate unit, school district]~~ A school entity, approved private school, State-operated program or facility or other public (excluding charter schools **and cyber charter schools** under Article XVII-A of The THE Public School Code of 1949 (24 P.S. §§ 17-1701-A—17-1751-A) or private organization providing educational services to children with disabilities or providing early intervention services.

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*Early intervention agency*—~~[An intermediate unit, school district]~~ A school entity or licensed provider ~~which~~ **THAT** has entered into a mutually agreed upon written arrangement (MAWA) with the Department to provide early intervention services to eligible young children in accordance with the act.

*Early intervention services*—~~As defined in the act~~ are individualized INDIVIDUALIZED services and supports provided to eligible young children in the least restrictive environment, including the child's home, in order to make measurable progress in preparation for school.

*Eligible young child*—A child who is less than the age of beginners and at least 3 years of age and who meets the criteria in 34 CFR ~~[300.7]~~ 300.8 (relating to **[a]** child with a disability).

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[*IST*—Instructional support team.]

*Parent*—The term as defined in 34 CFR [300.20] 300.30 (relating to parent) and also includes individuals appointed as foster parents under [42 Pa.C.S. §§ 6301—6311 (relating to the Juvenile Act)] 55 Pa. Code § 3700.4 (relating to definitions).

.....

**SCHOOL CODE—THE PUBLIC SCHOOL CODE OF 1949 (24 P.S. §§ 1-101—27-2702).**

***School entity*—A local public education provider such as a school district, area vocational-technical school or intermediate unit but excluding charter SCHOOLS and cyber charter schools under Article XVII-A of the Public School Code of 1949 (24 P. S. §§ 17-1701-A—17-1751-A).**

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*Student with a disability*—A child of school age who meets the criteria in 34 CFR [300.7 (relating to a child with a disability)] 300.8 (RELATING TO A CHILD WITH A DISABILITY).

## **§ 14.102. Purposes.**

(a) It is the intent of the Board that children with disabilities be provided with quality special education services and programs. The purposes of this chapter are to serve the following:

(1) To adopt Federal regulations by incorporation by reference to satisfy the statutory requirements under the Individuals with Disabilities Education Act (20 U.S.C.A. §§ 1400—[1419] 1482) and to ensure that:

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(ii) **Children with disabilities have access to the general curriculum, and participate in State and local assessments as established and described in Chapter 4 (relating to academic standards and assessment).**

(iii) **Children with disabilities are educated, to the maximum extent appropriate, with their nondisabled peers and are provided with supplementary aids and services.**

(iv) **School entities provide access to a full continuum of placement options as appropriate and necessary according to the child's IEP.**

(v) The rights of children with disabilities and parents of these children are protected.

**(vi) The use of early intervening services promotes students' success in a general education environment.**

(2) To adopt, except as expressly otherwise provided in this chapter, the requirements of 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities) as published at [64 FR 12418—12469 (March 12, 1999)] 71 FR 46540—46845 (August 14, 2006). The following sections are incorporated by reference[.]:

(i) [34 CFR 300.4—300.6 (defining the terms “act”; “assistive technology device”; and “assistive technology service”)] 34 CFR 300.4—300.6 (relating to act; assistive technology device; and assistive technology service).

[(ii) 34 CFR 300.7(a) and (c) (defining the term “child with a disability”).

(iii) 34 CFR 300.8—300.24 (defining the terms “consent”; “day”; “business day”; “school day”; “educational service agency”; “equipment”; “evaluation”; “free appropriate public education”; “include”; “individualized education program”; “individualized education program team”; “individualized family service plan”; “local educational agency”; “native language”; “parent”; “personally identifiable”; “public agency”; “qualified personnel”; and “related services”).

(iv) 34 CFR 300.26 (defining the term “special education”).

(v) 34 CFR 300.28 and 300.29 (defining the terms “supplementary aids and services”; and “transition services”).

(vi) 34 CFR 300.121—300.125 (relating to free appropriate public education (FAPE); exception to FAPE for certain ages; full educational opportunity goal (FEOG); FEOG—timetable; and child find).

(vii) 34 CFR 300.138 and 300.139 (relating to participation in assessments; and reports relating to assessments).

(viii) 34 CFR 300.300 (relating to provision of FAPE).

(ix) 34 CFR 300.302—300.309 (relating to residential placement; proper functioning of hearing aids; full educational opportunity goal; program options; nonacademic services; physical education; assistive technology; and extended school year services).

(x) 34 CFR 300.311(b) and (c) (relating to FAPE requirements for students with disabilities in adult prisons).

(xi) 34 CFR 300.313 (relating to children experiencing developmental delays).

- (xii) 34 CFR 300.320 and 300.321 (relating to initial evaluations; and reevaluations).
- (xiii) 34 CFR 300.340 (relating to definitions related to IEPs).
- (xiv) 34 CFR 300.342—300.346 (relating to when IEPs must be in effect; IEP meetings; IEP team; parent participation; and development, review and revision of IEP).
- (xv) 34 CFR 300.347 (a), (b) and (d) (relating to content of IEP).
- (xvi) 34 CFR 300.348—300.350 (relating to agency responsibilities for transition services; private school placements by public agencies; and IEPs—accountability).
- (xvii) 34 CFR 300.401 (regarding responsibility of state educational agency in connection with children with disabilities in private schools placed or referred by public agencies).
- (xviii) 34 CFR 300.403 (relating to placement of children by parents if FAPE is at issue).
- (xix) 34 CFR 300.450—300.462 (relating to children with disabilities enrolled by their parents in private schools).
- (xx) 34 CFR 300.500—300.515 (regarding certain due process procedures for parents and their children).
- (xxi) 34 CFR 300.519—300.529 (relating to discipline procedures).
- (xxii) 34 CFR 300.531—300.536 (regarding certain procedures for evaluation and determination of eligibility).
- (xxiii) 34 CFR 300.540—300.543 (relating to additional procedures for evaluating children with specific learning disabilities).
- (xxiv) 34 CFR 300.550—300.553 (relating to least restrictive environment (LRE) including general LRE requirements; continuum of alternative placements; placements; and nonacademic settings).
- (xxv) 34 CFR 300.560—300.574(a) and (b) (providing for confidentiality of information).
- (xxvi) 34 CFR 300.576 (relating to disciplinary information).]
- (ii) 34 CFR 300.8(a) and (c) (relating to child with a disability).

- (iii) 34 CFR 300.9—300.15 (relating to consent; core academic subjects; day; business day; school day; educational service agency; elementary school; equipment; and evaluation).
- (iv) 34 CFR 300.17—300.20 (relating to free appropriate public education; highly qualified special education teachers; homeless children; and include).
- (v) 34 CFR 300.22—300.24 (relating to individualized education program; individualized education program team; and individualized family service plan).
- (vi) 34 CFR 300.27—300.30 (relating to limited English proficient; local educational agency; native language; and parent).
- (vii) 34 CFR 300.32—300.37 (relating to personally identifiable; public agency; related services; scientifically based research; secondary school; and services plan).
- (viii) 34 CFR 300.39 (relating to special education).
- (ix) 34 CFR 300.41—300.45 (relating to State educational agency; supplementary aids and services; transition services; universal design; and ward of the State).
- (x) 34 CFR 300.101 and 300.102 (relating to free appropriate public education (FAPE); and limitation—exception to FAPE for certain ages).
- (xi) 34 CFR 300.104—300.108 (relating to residential placement; assistive technology; extended school year services; nonacademic services; and physical education).
- (xii) 34 CFR 300.113 and 300.114(a)(2) (relating to routine checking of hearing aids and external components of surgically implanted medical devices; and LRE requirements).
- (xiii) 34 CFR 300.115—300.117 (relating to continuum of alternative placements; placements; and nonacademic settings).
- (xiv) 34 CFR 300.122 (relating to evaluation).
- (xv) 34 CFR 300.130—300.144, regarding students enrolled by their parents in private schools.
- (xvi) 34 CFR 300.148 (relating to placement of children by parents when FAPE is at issue).
- (xvii) 34 CFR 300.160 (RELATING TO PARTICIPATION IN ASSESSMENTS).
- (xviii) 34 CFR 300.172 (relating to access to instructional materials).

- ~~(xviii)~~ (XXIX) 34 CFR 300.174 (relating to prohibition on mandatory medication).
- ~~(xix)~~ (XX) 34 CFR 300.207 (relating to personnel development).
- ~~(xx)~~ (XXI) 34 CFR 300.210—300.213 (relating to purchase of instructional materials; information for SEA; public information; and records regarding migratory children with disabilities).
- ~~(xxi)~~ (XXII) 34 CFR 300.224 (relating to requirements for establishing eligibility).
- ~~(xxii)~~ (XXIII) 34 CFR 300.226 (relating to early intervening services).
- ~~(xxiii)~~ (XXIV) 34 CFR 300.300 and 300.301 (relating to parental consent; and initial evaluations).
- ~~(xxiv)~~ (XXV) 34 CFR 300.302—300.307(a)(1) and (2) and (b) (relating to screening for instructional purposes is not evaluation; reevaluations; evaluation procedures; additional requirements for evaluations and reevaluations; determination of eligibility; and specific learning disabilities).
- ~~(xxv)~~ (XXVI) 34 CFR 300.308—300.311 (relating to additional group members; determining the existence of a specific learning disability; observation; and specific documentation for the eligibility determination).
- ~~(xxvi)~~ (XXVII) 34 CFR 300.320—300.325 (relating to definition of individualized education program; IEP Team; parent participation; when IEPs must be in effect; development, review, and revision of IEP; and private school placement by public agencies).
- ~~(xxvii)~~ (XXVIII) 34 CFR 300.327 and 300.328 (relating to educational placements; and alternative means of meeting participation).
- ~~(xxviii)~~ (XXIX) 34 CFR 300.501—300.508 (relating to opportunity to examine records; parent participation in meetings; independent education evaluation; prior notice by the public agency; content of notice; procedural safeguards notice; electronic mail; mediation; filing a due process complaint; and due process complaint).
- ~~(xxix)~~ (XXX) 34 CFR 300.510—300.516 (relating to resolution process; impartial due process hearing; hearing rights; hearing decisions; finality of decisions, appeal; partial review; timelines and convenience of hearings and reviews; and civil action).
- ~~(xxx)~~ (XXXI) 34 CFR 300.518(a), (b) and (d) and 300.519 (relating to child's status during proceedings; and surrogate parents).

~~(xxxii)~~ (XXXII) 34 CFR 300.530—300.537 (relating to authority of school personnel; determination of setting; appeal; placement during appeals; protections for children not determined eligible for special education and related services; referral to and action by law enforcement and judicial authorities; change of placement because of disciplinary removals; and state enforcement mechanisms).

~~(xxxiii)~~ (XXXIII) 34 CFR 300.610—300.625 (relating to confidentiality; definitions; notice to parents; access rights; record of access; records on more than one child; list of types and locations of information; fees; amendment of records at parent's request; opportunity for a hearing; result of hearing; hearing procedures; consent; safeguards; destruction of information; and children's rights).

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(b) To provide services and programs effectively, the Commonwealth will delegate operational responsibility for school aged students to its school districts to include the provision of child find duties prescribed by 34 CFR [300.125(a)] 300.111 (relating to child find).

#### **§ 14.103. Terminology related to Federal regulations.**

For purposes of interfacing with 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities), the following term applies, unless the context clearly indicates otherwise:

*Local educational agency*—Where the Federal provision uses the term “local educational agency,” for purposes of this chapter, the term means an intermediate unit, school district, State operated program or facility or other public organization providing educational services to children with disabilities or providing early intervention services. Applicability of this term to public charter schools is found in Chapter 711 (relating to charter school services and programs for children with disabilities). **In the application of 34 CFR 300.130—300.144, regarding children with disabilities enrolled by their parents in private schools, THE intermediate units UNIT shall be considered to be the local education agency.**

#### **§ 14.104. [Educational] Special education plans.**

(a) Each school district shall develop **and implement** a special education plan aligned with the strategic plan of the school district under § 4.13 (relating to strategic plans). The special education plan shall be developed every 3 years consistent with the **[3-year review cycle] phase** of the strategic plan of the school district. The Secretary will prescribe the format, content and time for submission of the special education plan.

(b) Each school district’s special education plan **[shall] must** specify **the** special education programs that operate in the district and those that are operated in the district



by intermediate units, area vocational technical schools ~~{and}~~, other agencies, and IT SHALL describe:

(1) Early intervening services under 34 CFR 300.226 (relating to early intervening services) and this chapter, if the services are provided by the school district.

(2) The school district procedures for complying with the State criteria for identifying children with specific learning disabilities.

(3) Examples of supplementary aids and services provided by the school district.

(4) Access to a full continuum of educational placements as required by the student's IEP.

(5) Policies and procedures designed to prevent the inappropriate over-identification or disproportionate representation by race and ethnicity of children with disabilities, for those school districts identified with significant disproportionality in accordance with 34 CFR 300.646(a) (relating to disproportionality).

(6) School district procedures on behavior support services, including a description of the training provided to staff in the use of positive behavior supports, de-escalation techniques and appropriate responses to student behavior that may require immediate intervention.

(7) Parent training activities provided by the school district.

(c) Each school district's special education plan ~~[shall]~~ **must** include procedures for the education of all students with ~~[a disability]~~ **disabilities** who are residents of the district, including those receiving special education in approved private schools and students with ~~[a disability]~~ **disabilities** who are nonresidents placed in private homes or institutions in the school district under sections 1305, 1306 and 1306.2 of the **Public** School Code ~~of 1949~~ (24 P.S. §§ 13-1305, 13-1306 and 13-1306.2).

(d) Each intermediate unit shall prepare annually and submit to the Secretary a special education plan specifying the special education services and programs to be operated by the intermediate unit, **including equitable services provided consistent with 34 CFR 300.130—300.144 and subsection (b)(2)—(4), (6) and (7)**. The Secretary will prescribe the format, content and time for submission of the intermediate units' plans.

(e) Each early intervention agency shall develop **and submit to the Department** an early intervention special education plan every **[3 years] year**.

(f) The Department will approve plans in accordance with the following criteria:

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(3) Placement of students with disabilities in settings other than regular education settings may not be based on lack of resources, facilities, staff or for administrative convenience.

(4) The plan meets the specifications defined in this chapter and the format, content and time for submission of the agency plans prescribed by the Secretary.

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(i) Each school entity shall maintain information concerning students with disabilities, the services provided, performance and discipline data, as specified by the Secretary, and report information in a form and at times as required by the Secretary.

#### § 14.105. Personnel.

##### (a) PARAPROFESSIONALS

(1) An instructional paraprofessional is a school employee who works under the direction of a certificated staff member to support and assist in providing instructional programs and services to children with disabilities or eligible young children. Instructional paraprofessional personnel hired by a school entity on or after July 1, 2008, shall meet the qualifications outlined in paragraph (1) or (2) and paragraph (3) or (4). Instructional paraprofessionals who were hired in that role by a school entity before July 1, 2008, shall meet the qualifications outlined in paragraph (3) or (4) by July 1, 2010 SUCH SUPPORT AND ASSISTANCE INCLUDES ONE-ON-ONE OR GROUP REVIEW OF MATERIAL TAUGHT BY CERTIFICATED STAFF, CLASSROOM MANAGEMENT AND IMPLEMENTATION OF POSITIVE BEHAVIOR SUPPORT PLANS. SERVICES MAY BE PROVIDED IN A SPECIAL EDUCATION CLASS, REGULAR EDUCATION CLASS OR OTHER INSTRUCTIONAL SETTING AS PROVIDED IN THE STUDENT'S IEP. ALL INSTRUCTIONAL PARAPROFESSIONALS SHALL MEET ONE OF THE FOLLOWING QUALIFICATIONS EFFECTIVE JULY 1, 2010:

(1) (I) Have completed at least 2 years of postsecondary study.

(2) (II) Possess an associate degree or higher.

(3) (III) Meet a rigorous standard of quality as demonstrated through a formal State or local academic assessment of knowledge in and ability to assist in instruction in reading, writing and mathematics.

(4) Meet a rigorous standard of quality as demonstrated through a formal State or local academic assessment of knowledge of, and the ability to assist in instruction, reading readiness, writing readiness and mathematics readiness, as appropriate.

~~(b) (2) Nothing in subsection (a) should be construed to supersede the terms of a collective bargaining agreement in effect on JULY 1, 2008 (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking-).~~

(3) INSTRUCTIONAL PARAPROFESSIONALS, EACH SCHOOL YEAR, SHALL PROVIDE EVIDENCE OF 20 HOURS OF STAFF DEVELOPMENT ACTIVITIES RELATED TO THEIR ASSIGNMENT.

(4) A PERSONAL CARE ASSISTANT PROVIDES ONE-TO-ONE SUPPORT AND ASSISTANCE TO A STUDENT, INCLUDING SUPPORT AND ASSISTANCE IN THE USE OF MEDICAL EQUIPMENT (E.G., AUGMENTATIVE COMMUNICATION DEVICES; ACTIVITIES OF DAILY LIVING; AND MONITORING HEALTH AND BEHAVIOR). A PERSONAL CARE ASSISTANT MAY PROVIDE SUPPORT TO MORE THAN ONE STUDENT, BUT NOT AT THE SAME TIME. PERSONAL CARE ASSISTANTS SHALL PROVIDE EVIDENCE OF 20 HOURS OF STAFF DEVELOPMENT ACTIVITIES RELATED TO THEIR ASSIGNMENT EACH SCHOOL YEAR. THE 20 HOURS OF TRAINING MAY INCLUDE TRAINING REQUIRED BY THE SCHOOL-BASED ACCESS PROGRAM.

(B) EDUCATIONAL INTERPRETERS. AN EDUCATIONAL INTERPRETER IS AN INDIVIDUAL WHO PROVIDES STUDENTS WHO ARE DEAF OR HARD OF HEARING WITH INTERPRETING OR TRANSLITERATING SERVICES IN AN EDUCATIONAL SETTING.

(e) (1) To serve as an educational interpreter, an individual shall meet the qualifications in paragraph ~~(1)~~ (I) or ~~(2)~~ (II) and paragraph ~~(3)~~ (III):

~~(1)~~ (I) Achieve and provide evidence of a score of 3.5 on the Educational Interpreter Performance Assessment (EIPA) for the appropriate grade level to which the person has been assigned.

~~(2)~~ (II) Be a qualified educational interpreter or qualified transliterator under the Sign Language Interpreter and Transliterator Registration Act (63 P. S. §§ 1725.1—1725.12) and its implementing regulations.

~~(3)~~ (III) Provide evidence of a minimum of 20 hours of staff development activities relating to interpreting or transliterating services annually.

~~(d) (2) The Board, in consultation with THE Department, will review the EIPA score requirement every 2 years.~~

### (C) CASELOAD

(e) (1) The following words and terms, when used in this subsection, have the following meanings, unless the context clearly indicates otherwise:

Case management—Development and management of an individual IEP, and if required in the IEP, monitoring and consultation with regular education or special education teachers, or both.

Replacement services—

(i) Direct services to an individual student with disabilities or small group of those students, that replace general education instruction within the regular education curriculum or replace the general curriculum with alternate curriculum.

(ii) The term includes teaching to the State-approved alternate standards.

(I) *FULL-TIME*—SPECIAL EDUCATION SUPPORTS AND SERVICES PROVIDED BY SPECIAL EDUCATION PERSONNEL FOR 80% OR MORE OF THE SCHOOL DAY.

(II) *ITINERANT*—SPECIAL EDUCATION SUPPORTS AND SERVICES PROVIDED BY SPECIAL EDUCATION PERSONNEL FOR 20% OR LESS OF THE SCHOOL DAY.

(III) *SUPPLEMENTAL*—SPECIAL EDUCATION SUPPORTS AND SERVICES PROVIDED BY SPECIAL EDUCATION PERSONNEL FOR MORE THAN 20% BUT LESS THAN 80% OF THE SCHOOL DAY.

(A) (2) The following chart presents REPRESENTS the maximum caseload NUMBER OF STUDENTS allowed on a single teacher's roll CASELOAD for each school district:

<u>Level I Services</u>	<u>50</u> <u>students</u>
<u>Level I services may include one or any combination of the following services: Case Management; Supplemental Services; and Replacement Services up to 20% of the instructional day</u>	
<u>Level II Services</u>	<u>25</u> <u>students</u>
<u>Level II services must include Replacement Services 21% to 50% of the instructional day and may also include Case Management and Supplemental Services</u>	
<u>Level III Services</u>	<u>15</u> <u>students</u>
<u>Level III services must include Replacement Services 51% to 75% of the instructional day and may also include Case Management and Supplemental Services</u>	
<u>Level IV Services</u>	<u>8</u> <u>students</u>

Level IV services must include Replacement Services more than 75% of the instructional day and may also include Case Management and Supplemental Services

Speech and Language Support

65  
students

	ITINERANT (20% OR LESS)	SUPPLEMENTAL (LESS THAN 80% BUT MORE THAN 20%)	FULL- TIME (80% OR MORE)
LEARNING SUPPORT	50	20	12
LIFE SKILLS SUPPORT	20	20	12 (GRADES K-6)  15 (GRADES 7-12)
EMOTIONAL SUPPORT	50	20	12
DEAF AND HEARING IMPAIRED SUPPORT	50	15	8
BLIND AND VISUALLY IMPAIRED SUPPORT	50	15	12
SPEECH AND LANGUAGE SUPPORT	65		8
PHYSICAL SUPPORT	50	15	12
AUTISTIC SUPPORT	12	8	8
MULTIPLE DISABILITIES SUPPORT	12	8	8

(B) (3) If a teacher provides more than one level of support to different students, the maximum number for the purpose of caseload will be prorated based upon the percentage of time providing that level of service and the maximum number of

**students allowed: EACH STUDENT WITH A DISABILITY MUST BE ASSIGNED TO A SPECIAL EDUCATION TEACHER'S CASELOAD.**

**~~(C)~~ (4) A school district may request approval for a caseload chart which THAT varies from that in ~~clause (A)~~ PARAGRAPH (2) as part of its special education plan consistent with § 14.104 (relating to special education plans). The caseload and supporting documents submitted must:**

**~~(I)~~ (i) Ensure the ability of assigned staff to provide the services required in each student's IEP.**

**~~(H)~~ (ii) Apply to special education classes operated in the school district.**

**~~(HH)~~ (iii) Provide a justification for why the chart deviates from the caseload chart in ~~clause (E)~~ PARAGRAPH (2).**

**~~(IV)~~ (iv) Describe the opportunities for parents, teachers and other interested parties to review and comment on the chart prior to its submission. The district shall provide and include a copy of the notice to the public indicating the district intends to request a waiver of caseload regulations and a description of how parents, teachers and other interested parties were provided opportunities to give comment on the waiver request.**

**~~(D)~~ (5) Classes or programs with students from more than one district, regardless of whether operated by a school district, intermediate unit or agency, shall follow the caseload chart of the district where the class or program is located. Intermediate unit itinerant services provided to multiple districts must follow the caseload chart under ~~subsection (e)~~ PARAGRAPH (2).**

**~~(E)~~ (6) Caseloads are not applicable to approved private schools or to chartered schools for the deaf and blind.**

**~~(F)~~ (7) The Department may withdraw approval of variance in the caseload chart for a school district if its caseload is determined to be inadequate. The Department will consider at least the following indicators when making the determination:**

**~~(I)~~ (i) Graduation rates of students with a disability.**

**~~(H)~~ (ii) Drop-out rates of students with a disability.**

**~~(HH)~~ (iii) Postsecondary transition of students with a disability.**

**~~(IV)~~ (iv) Rate of grade level retentions.**

**~~(V)~~ (v) Statewide and district-wide assessment results as prescribed by §§ 4.51 and 4.52 (relating to State assessment system; and local assessment system).**

*Supplemental services--*

(i) Direct services to an individual student with disabilities or small group of those students, that supplement the general education curriculum.

(ii) For example, the term includes co-teaching, preteaching, reteaching, modeling, guided practice, and the like.

§ 14.106. Access to instructional materials.

(a) The Board adopts the National Instructional Materials Accessibility Standard (NIMAS) as defined in section 674(e)(3)(B) of the Education of Individuals with Disabilities Education Act (20 U.S.C.A. § 1474(e)(3)(B)) and set forth in 71 FR 41084 (July 19, 2006) for the purpose of providing print instructional materials in alternate accessible formats or specialized formats to blind persons or other persons with print disabilities in a timely manner. To insure ENSURE the timely provision of high quality, accessible instructional materials to children who are blind or other persons with print disabilities, agencies shall adopt the NIMAS. The NIMAS refers to a standard for source files of print instructional materials created by publishers that may be converted into accessible instructional materials.

(b) Agencies shall, IN A TIMELY MANNER, provide print instructional materials in specialized, accessible formats (that is, Braille, audio, digital, large-print, and the like) to children who are blind or other persons with print disabilities, as defined in the act to provide books for adult blind approved March 3, 1931 (see 2 U.S.C.A. § 135a (regarding books and sound-reproduction records for blind and other physically handicapped residents; annual appropriations; and purchases)), in a timely manner.

(c) Agencies act in a timely manner in providing instructional materials under subsection (a) if they take all reasonable steps to ensure that children who are blind or other persons with print disabilities have access to their accessible format instructional materials at the same time that students without disabilities have access to instructional materials. Agencies may not withhold instructional materials from other students until instructional materials in accessible formats are available.

(d) Receipt of a portion of the instructional materials in alternate accessible or specialized format will be considered receipt in a timely manner if the material received covers the chapters that are currently being taught in the student's class.

(e) If a child who is blind or other person with a print disability enrolls in school after the start of the school year, an agency shall take all reasonable steps to ensure that the student has access to accessible format instructional materials within 10 school days from the time it is determined that the child requires printed instructional materials in an alternate accessible or specialized format.

**(f) The Department or agencies may coordinate with the National Instructional Materials Access Center (NIMAC) to facilitate the production of and delivery of accessible materials to children who are blind or other persons with print disabilities. The NIMAC refers to the central repository, established under section 674(e) of the Education of Individuals with Disabilities Education Act, which is responsible for processing, storing and distributing NIMAS files of textbooks and core instructional materials.**

**(g) Agencies coordinating with NIMAC shall require textbook publishers to deliver the contents of print instructional materials to the NIMAC in NIMAS format files on or before delivery of the print instructional materials to the agency. Agencies that choose not to coordinate with NIMAC may require that publishers deliver the contents of print instructional materials to the NIMAC in NIMAS format files on or before delivery of the print instructional materials to the agency.**

#### **§ 14.107. Complaint procedure.**

**The Department will establish a complaint procedure consistent with 34 CFR 300.151—300.153 (relating to adoption of State complaint procedures; minimum State complaint procedures; and filing a complaint) and disseminate notice of that procedure.**

#### **§ 14.108. Access to classrooms.**

**Parents shall have reasonable access to their child’s classrooms, within the parameters of local educational agency policy.**

### **CHILD FIND, SCREENING AND EVALUATION**

#### **§ 14.121. Child find.**

(a) In addition to the requirements incorporated by reference in 34 CFR [300.125(a)(1)(i)] 300.111 (relating to child find), each school district shall adopt and use a public outreach awareness system to locate and identify children thought to be eligible for special education within the school district’s jurisdiction.

(b) Each school district shall conduct awareness activities to inform the public of its early intervention and special education services and programs and the manner in which to request services and programs. **Written information shall be published in the school district handbook and school district website. The public awareness effort must include information regarding potential signs of developmental delays and other risk factors that could indicate disabilities.**



(c) Each school district shall provide annual public notification, published or announced in newspapers **[or], electronic media and** other media**[, or both]**, with circulation adequate to notify parents throughout the school district of child identification activities and of the procedures followed to ensure confidentiality of information pertaining to students with disabilities or eligible young children in accordance with this chapter.

**(d) Intermediate units are responsible for child find activities necessary to provide equitable services consistent with 34 CFR 300.130—300.144, regarding children with disabilities enrolled by their parents in private schools.**

### **§ 14.122. Screening.**

(a) Each school district shall establish a system of screening, **which may include early intervening services**, to accomplish the following:

(1) Identify and provide initial screening for students prior to referral for a special education evaluation.

(2) Provide peer support for teachers and other staff members to assist them in working effectively with students in the general education curriculum. **To provide this support, school districts may implement instructional support teams according to Department guidelines or use an alternative process.**

(3) **[Conduct hearing and vision screening in accordance with section 1402 of the Public School Code of 1949 (24 P.S. § 14-1402) for the purpose of identifying students with hearing or vision difficulty so that they can be referred for assistance or recommended for evaluation for special education.**

(4)] Identify students who may need special education services and programs.

(b) **[Each school district shall implement a comprehensive screening process. School districts may implement instructional support according to Department guidelines or an alternative screening process. School districts which elect not to use instructional support for screening shall develop and implement a comprehensive screening process that meets the requirements specified in subsections (a) and (c).**

(c) **The screening process shall include:**

(1) **For students with academic concerns, an assessment of the student's functioning in the curriculum including curriculum-based or performance-based assessment.**

(2) **For students with behavioral concerns, a systematic observation of the student's behavior in the classroom or area in which the student is displaying difficulty.**

(3) An intervention based on the results of the assessments under paragraph (1) or (2).

(4) An assessment of the student's response to the intervention.

(5) A determination as to whether the student's assessed difficulties are due to a lack of instruction or limited English proficiency.

(6) A determination as to whether the student's needs exceed the functional ability of the regular education program to maintain the student at an appropriate instructional level.

(7) Activities designed to gain the participation of parents.

(d) If screening activities have produced little or no improvement within 60 school days after initiation, the student shall be referred for evaluation under § 14.123 (relating to evaluation).

(e) Screening activities do not serve as a bar to the right of a parent to request an evaluation, at any time, including prior to or during the conduct of screening activities.]

**The screening process must include:**

**(1) Hearing and vision screening in accordance with section 1402 of the Public School Code of 1949 (24 P.S. § 14-1402) for the purpose of identifying students with hearing or vision difficulty so that they can be referred for assistance or recommended for evaluation for special education.**

**(2) Screening at reasonable intervals to determine whether all students are performing based on grade-appropriate standards in core academic subjects.**

**(c) Each school district may develop a program of early intervening services. In the case of school districts meeting the criteria in 34 CFR 300.646(b)(2) (relating to disproportionality), as established by the Department, the early intervening services are required and must include:**

**(1) A verification that the student was provided with appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C.A. § 6368(3)), and appropriate instruction in math.**

**(2) For students with academic concerns, an assessment of the student's performance in relation to State-approved grade level standards.**

(3) For students with behavioral concerns, a systematic observation of the student's behavior in the school environment where the student is displaying difficulty.

(4) A research-based intervention to increase the student's rate of learning or behavior change based on the results of the assessments under paragraph (2) or (3).

(5) Repeated assessments of achievement or behavior, or both, conducted at reasonable intervals, reflecting formal monitoring of student progress during the interventions.

(6) A determination as to whether the student's assessed difficulties are the result of a lack of instruction or limited English proficiency.

(7) A determination as to whether the student's needs exceed the functional ability of the regular education program to maintain the student at an appropriate instructional level.

(8) Documentation that information about the student's progress as identified in paragraph (5) was periodically provided to the student's parents.

(d) Screening or early intervening activities do not serve as a bar to the right of a parent to request an evaluation, at any time, including prior to or during the conduct of early intervening activities.

### **§ 14.123. Evaluation.**

(a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under 34 CFR [300.534(a)(1)] **300.306** (relating to determination of eligibility), shall include a certified school psychologist when evaluating a child for autism, emotional disturbance, mental retardation, multiple disabilities, other health impairments, specific learning disability or traumatic brain injury.

(b) In addition to the requirements incorporated by reference in 34 CFR [300.531—300.535] **300.301 (relating to initial evaluations)**, the initial evaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60 school CALENDAR days after the agency receives written parental consent **for evaluation, EXCEPT THAT THE CALENDAR DAYS FROM THE DAY AFTER THE LAST DAY OF THE SPRING SCHOOL TERM UP TO AND INCLUDING THE DAY BEFORE THE FIRST DAY OF THE SUBSEQUENT FALL SCHOOL TERM SHALL NOT BE COUNTED.**

**(c) Parents may request an evaluation at any time, and the request must be in writing. The school entity shall have MAKE THE PERMISSION TO EVALUATE FORM readily available for that purpose, an evaluation request form. If a request**

is made orally to any professional employee or administrator of the school entity, that individual shall provide a copy of the evaluation request PERMISSION TO EVALUATE form to the parents within ~~5 school~~ 10 CALENDAR days of the oral request.

(d) Copies of the evaluation report shall be disseminated to the parents at least 10 school days prior to the meeting of the IEP team, unless this requirement is waived by a parent in writing.

#### **§ 14.124. Reevaluation.**

(a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under 34 CFR [300.536] **300.303** (relating to **[reevaluation] reevaluations**), shall include a certified school psychologist when evaluating a child for autism, emotional disturbance, mental retardation, multiple disabilities, other health impairment, specific learning disability and traumatic brain injury.

(b) In addition to the requirements incorporated by reference in 34 CFR [300.536 (relating to reevaluation)] **300.303**, ~~a reevaluation report shall be provided to the parents within~~ **THE REEVALUATION TIMELINE WILL BE 60 school CALENDAR days from the date [that the request for reevaluation was received from the parent or teacher, or from the date that a determination is made by the agency that conditions warrant a reevaluation.] on which the agency is able to document that it has made reasonable efforts to obtain parental consent in accordance with 34 CFR 300.300(e)(2) (relating to parental consent) and the parents have failed to respond,** EXCEPT THAT THE CALENDAR DAYS FROM THE DAY AFTER THE LAST DAY OF THE SPRING SCHOOL TERM UP TO AND INCLUDING THE DAY BEFORE THE FIRST DAY OF THE SUBSEQUENT FALL SCHOOL TERM SHALL NOT BE COUNTED.

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(d) Copies of the reevaluation report shall be disseminated to the parents at least 10 school days prior to the meeting of the IEP team, unless this requirement is waived by a parent in writing.

#### **§ 14.125. Criteria for the determination of specific learning disabilities.**

(a) This section contains the State-level criteria for determining the existence of a specific learning disability. Each school district and intermediate unit shall develop procedures for the determination of specific learning disabilities that conform to criteria in this section. These procedures shall be included in the school district's and intermediate unit's special education plan in accordance with § 14.104(b)

(relating to special education plans). To determine that a child has a specific learning disability, the school district or intermediate unit shall:

(1) Address whether the child does not achieve adequately for the child's age or meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and scientifically based instruction appropriate for the child's age or State-approved grade-level standards:

- (i) Oral expression.
- (ii) Listening comprehension.
- (iii) Written expression.
- (iv) Basic reading skill.
- (v) Reading fluency skills.
- (vi) Reading comprehension.
- (vii) Mathematics calculation.
- (viii) Mathematics problem solving.

(2) Use one of the following procedures:

(i) A process based on the child's response to scientific, research-based intervention, which includes documentation that:

- (A) The student received high quality instruction in the general education setting.
- (B) Research-based interventions were provided to the student.
- (C) Student progress was regularly monitored.

(ii) A process that examines whether a child exhibits a pattern of strengths and weaknesses, relative to intellectual ability as defined by a severe discrepancy between intellectual ability and achievement, or relative to age or grade.

(3) Have determined that its findings under this section are not primarily the result of:

- (i) A visual, hearing or orthopedic disability.
- (ii) Mental retardation.

(iii) Emotional disturbance.

(iv) Cultural factors.

(v) Environmental or economic disadvantage.

(vi) Limited English proficiency.

(4) Ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or mathematics by considering documentation that:

(i) Prior to, or as a part of, the referral process, the child was provided scientifically-based instruction in regular education settings, delivered by qualified personnel, as indicated by observations of routine classroom instruction.

(ii) Repeated assessments of achievement were conducted at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

## IEP

### § 14.131. IEP.

(a) In addition to the requirements incorporated by reference (see 34 CFR 300.320—300.324), the [following provisions apply to IEPs] IEP of each student with a disability must include:

(1) [Copies of the comprehensive evaluation report shall be disseminated to the parents at least 10 school days prior to the meeting of the IEP team. A parent may waive this provision.] A description of the type or types of support as defined in this paragraph that the student will receive, the determination of which may not be based on the categories of the child's disability alone. Students may receive more than one type of support as appropriate and as outlined in the IEP and in accordance with this chapter. SPECIAL EDUCATION SUPPORTS AND SERVICES MAY BE DELIVERED IN THE REGULAR CLASSROOM SETTING AND OTHER SETTINGS AS DETERMINED BY THE IEP TEAM. IN DETERMINING THE EDUCATIONAL PLACEMENT, THE IEP TEAM MUST FIRST CONSIDER THE REGULAR CLASSROOM WITH THE PROVISION OF SUPPLEMENTARY AIDS AND SERVICES BEFORE CONSIDERING THE PROVISION OF SERVICES IN OTHER SETTINGS.

(i) Autistic support. Services for students with the disability of autism who require services to address needs primarily in the areas of communication, social skills or behaviors consistent with those of autism spectrum disorders. The IEP for these students must address needs as identified by the team which may include, as

appropriate, the verbal and nonverbal communication needs of the child; social interaction skills and proficiencies; the child's response to sensory experiences and changes in the environment, daily routine and schedules; and, the need for POSITIVE BEHAVIOR SUPPORTS OR behavioral interventions or supports.

(ii) *Blind-visually impaired support.* Services for students with the disability of visual impairment including blindness, who require services to address needs primarily in the areas of accessing print and other visually-presented materials, orientation and mobility, accessing public and private accommodations, or use of assistive technologies designed for individuals with visual impairments or blindness. For students who are blind or visually impaired, the IEP must include a description of the instruction in Braille and the use of Braille unless the IEP team determines, after the evaluation of the child's reading and writing needs, and appropriate reading and writing media, the extent to which Braille will be taught and used for the student's learning materials.

(iii) *Deaf and hard of hearing support.* Services for students with the disability of deafness or hearing impairment, who require services to address needs primarily in the area of reading, communication, accessing public and private accommodations or use of assistive technologies designed for individuals with deafness or hearing impairment. For these students, the IEP must include a communication plan to address the language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and assistive technology devices and services.

(iv) *Emotional support.* Services for students with a disability who require services primarily in the areas of social or emotional skills development or functional behavior.

(v) *Learning support.* Services for students with a disability who require services primarily in the areas of reading, writing, mathematics, or speaking or listening skills related to academic performance.

(vi) *Life skills support.* Services for students with a disability who require services primarily in the areas of academic, functional or vocational skills necessary for independent living.

(vii) *Multiple disabilities support.* Services for students with more than one disability the result of which is severe impairment requiring services primarily in the areas of academic, functional or vocational skills necessary for independent living.

(viii) *Physical support.* Services for students with a physical disability who require services primarily in the areas of functional motor skill development, including

adaptive physical education or use of assistive technologies designed to provide or facilitate the development of functional motor capacity or skills.

(ix) *Speech and language support.* Services for students for students with speech and language impairments who require services primarily in the areas of communication or use of assistive technologies designed to provide or facilitate the development of communication capacity or skills.

(2) [The IEP of each student shall be implemented as soon as possible but no later than 10 school days after its completion.] Supplementary aids and services in accordance with 34 CFR 300.42 (relating to supplementary aids and services).

(3) [If a student with a disability moves from one school district in this Commonwealth to another, the new district shall implement the existing IEP to the extent possible or shall provide the services and programs specified in an interim IEP agreed to by the parents. The interim IEP shall be implemented until a new IEP is developed and implemented or until the completion of due process proceedings under this chapter.] A description of the level or levels TYPE OR TYPES of support as defined in § 14.105(e)(2) (relating to personnel).

(4) [If a student with a disability moves into a school district in this Commonwealth from another state, the new school district may treat the student as a new enrollee and place the student into regular education and it is not required to implement the student's existing IEP.] The location where the student attends school and whether this is the school the student would attend if the student did not have an IEP.

(5) [Every student receiving special education and related services provided for in an IEP developed prior June 9, 2001, shall continue to receive the special education and related services under that IEP subject to the terms, limitations and conditions set forth in law.] For students who are 14 years of age or older, a transition plan which THAT includes appropriate measurable postsecondary goals related to training, education, employment and, when appropriate, independent living skills.

(6) The IEP of each student shall be implemented as soon as possible, but no later than 10 school days after its completion.

(7) Every student receiving special education and related services provided for in an IEP developed prior to JULY 1, 2008 (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*), shall continue to receive the special education and related services under that IEP, subject to the terms, limitations and conditions set forth in law.

(b) In addition to the requirements incorporated by reference in 34 CFR [300.29, 300.344(b) and 300.347(b) (relating to transition services; IEP team; and content of



IEP)] **300.324 (relating to development, review, and revision of IEP)**, each school [district] **entity** shall designate persons responsible to coordinate transition activities.

~~**(e) The member of the IEP team from the school entity, as identified in 34 CFR 300.321(a)(4) (relating to IEP Team), may not be excused from attendance from an IEP team meeting.**~~

#### **§ 14.132. ESY.**

[This section sets forth the standards for determining whether a student with disabilities requires ESY as part of the student's program.]

**(a) In addition to the requirements incorporated by reference in 34 CFR 300.106 (relating to extended school year services), school entities shall use the following standards for determining whether a student with disabilities requires ESY as part of the student's program:**

(1) At each IEP meeting for a student with disabilities, the school [districts] **entity** shall determine whether the student is eligible for ESY services and, if so, make subsequent determinations about the services to be provided.

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**[(3)] (b)** Reliable sources of information regarding a student's educational needs, propensity to progress, recoupment potential and year-to-year progress may include the following:

**[(i)] (1)** Progress on goals in consecutive IEPs.

**[(ii)] (2)** Progress reports maintained by educators, therapists and others having direct contact with the student before and after interruptions in the education program.

**[(iii)] (3)** Reports by parents of negative changes in adaptive behaviors or in other skill areas.

**[(iv)] (4)** Medical or other agency reports indicating degenerative-type difficulties, which become exacerbated during breaks in educational services.

**[(v)] (5)** Observations and opinions by educators, parents and others.

**[(vi)] (6)** Results of tests, including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments and other equivalent measures.

**[(4)] (c)** The need for ESY services will not be based on any of the following:

[(i)] (1) The desire or need for day care or respite care services.

[(ii)] (2) The desire or need for a summer recreation program.

[(iii)] (3) The desire or need for other programs or services **THAT which**, while they may provide educational benefit, are not required to ensure the provision of a free appropriate public education.

(d) Students with severe disabilities such as autism/pervasive developmental disorder, serious emotional disturbance; severe mental retardation; degenerative impairments with mental involvement; and severe multiple disabilities require expeditious determinations of eligibility for extended school year services to be provided as follows:

(1) Parents of students with severe disabilities shall be notified by the school entity of the annual review meeting to ensure ENCOURAGE their participation.

(2) The IEP review meeting must occur no later than February 28 of each school year for students with severe disabilities.

(3) The Notice of Recommended Educational Placement (NOREP) shall be issued to the parent no later than March 31 of the school year for students with severe disabilities.

(4) If a student with a severe disability transfers into a school entity after the dates in paragraphs (2) and (3), and the ESY eligibility decision has not been made, the eligibility and program content must be determined at the IEP meeting.

(e) School entities shall consider the eligibility for ESY services of all students with disabilities at the IEP meeting. ESY determinations for students other than those described in subsection (d) are not subject to the time lines in subsection (d). However, these determinations shall still be made in a timely manner. If the parents disagree with the school entity's recommendation on ESY, the parents will be afforded an expedited due process hearing.

#### **§ 14.133. POSITIVE Behavior support.**

(a) Positive, rather than negative, measures shall form the basis of behavior support programs to ensure that all students AND ELIGIBLE YOUNG CHILDREN shall be free from demeaning treatment and, THE USE OF aversive techniques or AND the inappropriate UNREASONABLE use of restraints. Behavior support programs SHALL include a variety of RESEARCH BASED PRACTICES AND techniques to develop and maintain skills that will enhance an individual student's or ELIGIBLE young child's opportunity for learning and self-fulfillment. **BEHAVIOR SUPPORT PROGRAMS AND PLANS SHALL BE BASED ON A FUNCTIONAL ASSESSMENT OF BEHAVIOR AND UTILIZE POSITIVE BEHAVIOR**

**TECHNIQUES. WHEN AN INTERVENTION IS NEEDED TO ADDRESS PROBLEM BEHAVIOR, The THE types of intervention chosen for a particular student or ELIGIBLE young child shall be the least intrusive necessary. THE USE OF RESTRAINTS IS CONSIDERED A MEASURE OF LAST RESORT, ONLY TO BE USED AFTER OTHER LESS RESTRICTIVE MEASURES, INCLUDING DE-ESCALATION TECHNIQUES, IN ACCORD WITH SUBSECTION (C)(2).**

(b) Notwithstanding the requirements incorporated by reference in 34 CFR [300.24(b)(9)(vi), (13)(v), 300.346(a)(2)(i) and (d) and 300.520(b) and (c) (relating to related services; development, review, and revision of IEP; and authority of school personnel)] 300.34, 300.324 and 300.530 (relating to related services; development, review, and revision of IEP; and authority of school personnel), with regard to a child's behavior, the following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

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*Positive techniques BEHAVIOR SUPPORT PLANS—Methods* A PLAN FOR STUDENTS WITH DISABILITIES AND ELIGIBLE YOUNG CHILDREN WHO REQUIRE SPECIFIC INTERVENTION TO ADDRESS BEHAVIOR THAT INTERFERES WITH LEARNING. A POSITIVE BEHAVIOR SUPPORT PLAN SHALL BE DEVELOPED BY THE IEP TEAM, BE BASED ON A FUNCTIONAL BEHAVIOR ASSESSMENT, AND BECOME PART OF THE INDIVIDUAL ELIGIBLE YOUNG CHILD'S OR STUDENT'S IEP. SUCH PLANS SHALL INCLUDE METHODS THAT ~~which~~ utilize positive reinforcement and other positive techniques to shape a student's OR ELIGIBLE YOUNG CHILD'S behavior, ranging from the use of positive verbal statements as a reward for good behavior to specific tangible rewards.

*Restraints—*

(i) ~~Devices and techniques, that last longer than 30 consecutive seconds, designed and used to control acute [or], episodic [aggressive] behaviors [or to control involuntary movements or lack of muscular control due to organic causes or conditions. The term includes physical and mechanical restraints.], including aggressive or self injurious behaviors. Redirection or physical prompting as a teaching technique when a student does not exhibit active resistance is not considered a restraint. Devices, objects or techniques prescribed by a qualified medical professional for reasons of safety or for therapeutic or medical treatments are excluded from this definition.~~ THE APPLICATION OF PHYSICAL FORCE, WITH OR WITHOUT THE USE OF ANY DEVICE, FOR THE PURPOSE OF RESTRAINING THE FREE MOVEMENT OF A STUDENT'S OR ELIGIBLE YOUNG CHILD'S BODY. THE TERM RESTRAINT DOES NOT INCLUDE BRIEFLY HOLDING, WITHOUT FORCE, A STUDENT OR ELIGIBLE YOUNG CHILD IN ORDER TO CALM OR COMFORT HIM, GUIDING A STUDENT OR ELIGIBLE YOUNG CHILD TO AN APPROPRIATE ACTIVITY, OR HOLDING

A STUDENT'S OR ELIGIBLE YOUNG CHILD'S HAND TO SAFELY ESCORT HER FROM ONE AREA TO ANOTHER.

~~(ii) Examples excluded from this definition include devices used for physical or occupational therapy, seatbelts in wheelchairs or on toilets for balance and safety, safety harnesses in buses, functional positioning devices or hand over hand assistance with feeding or task completion.~~ EXCLUDED FROM THIS DEFINITION ARE HAND-OVER-HAND ASSISTANCE WITH FEEDING OR TASK COMPLETION AND TECHNIQUES PRESCRIBED BY A QUALIFIED MEDICAL PROFESSIONAL FOR REASONS OF SAFETY OR FOR THERAPEUTIC OR MEDICAL TREATMENT, AS AGREED TO BY THE STUDENT'S OR ELIGIBLE YOUNG CHILD'S PARENTS AND SPECIFIED IN THE IEP. DEVICES USED FOR PHYSICAL OR OCCUPATIONAL THERAPY, SEATBELTS IN WHEEL CHAIRS OR ON TOILETS USED FOR BALANCE AND SAFETY, SAFETY HARNESSSES IN BUSES, AND FUNCTIONAL POSITIONING DEVICES ARE EXAMPLES OF MECHANICAL RESTRAINTS WHICH ARE EXCLUDED FROM THIS DEFINITION, AND GOVERNED BY SUBSECTION (d).

(c) Restraints to control acute or episodic aggressive or self-injurious behavior may be used only when the student is acting in a manner as to be a clear and present danger to himself, to other students or to employees, and only when less restrictive measures and techniques have proven to be or are less effective. [The use of restraints to control the aggressive behavior of an individual student shall cause a meeting of the IEP team to review the current IEP for appropriateness and effectiveness. The use of restraints may not be included in the IEP for the convenience of staff, as a substitute for an educational program, or employed as punishment.]

~~(1) 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 be obtained within 10 school days following the need for the use of a restrictive procedure. The need for restrictive procedures for safety should be noted in the student's IEP.~~ THE USE OF RESTRAINTS TO CONTROL THE AGGRESSIVE BEHAVIOR OF AN INDIVIDUAL STUDENT OR ELIGIBLE YOUNG CHILD SHALL CAUSE THE SCHOOL ENTITY TO NOTIFY THE PARENT OF THE USE OF RESTRAINT AND SHALL CAUSE A MEETING OF THE IEP TEAM WITHIN 10 SCHOOL DAYS OF THE INAPPROPRIATE BEHAVIOR CAUSING THE USE OF RESTRAINTS, UNLESS THE PARENT, AFTER WRITTEN NOTICE, AGREES IN WRITING TO WAIVE THE MEETING. AT THIS MEETING, THE IEP TEAM SHALL CONSIDER WHETHER THE STUDENT OR ELIGIBLE YOUNG CHILD NEEDS A FUNCTIONAL BEHAVIORAL ASSESSMENT, REEVALUATION, A NEW OR REVISED POSITIVE BEHAVIOR SUPPORT PLAN, OR A CHANGE OF PLACEMENT TO ADDRESS THE INAPPROPRIATE BEHAVIOR.

~~(2) 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. At this meeting, the team shall consider whether the student needs a behavioral assessment, reevaluation, a new or revised behavior plan, or a change of placement to address the inappropriate behavior~~  
MAY ONLY BE INCLUDED IN A STUDENT'S OR ELIGIBLE YOUNG CHILD'S IEP WHEN:

(I) UTILIZED WITH SPECIFIC COMPONENT ELEMENTS OF POSITIVE BEHAVIOR SUPPORT;

(II) USED IN CONJUNCTION WITH THE TEACHING OF SOCIALLY ACCEPTABLE ALTERNATIVE SKILLS TO REPLACE PROBLEM BEHAVIOR;

(III) STAFF ARE AUTHORIZED TO USE THE PROCEDURE AND HAVE RECEIVED THE STAFF TRAINING REQUIRED; AND

(IV) THERE IS A PLAN IN PLACE FOR ELIMINATING THE USE OF RESTRAINT THROUGH THE APPLICATION OF POSITIVE BEHAVIOR SUPPORT.

(3) THE USE OF PRONE RESTRAINTS IS PROHIBITED IN EDUCATIONAL PROGRAMS. PRONE RESTRAINTS ARE THOSE IN WHICH A STUDENT OR ELIGIBLE YOUNG CHILD IS HELD FACE DOWN ON THE FLOOR.

~~(3) (4) The use of restraints may not be included in the IEP for the convenience of staff, as a substitute for an educational program, or employed as punishment.~~

~~(4) (5) School entities shall maintain and report data on the use of restraints as prescribed by the Secretary. THE REPORT SHALL BE REVIEWED DURING CYCLICAL COMPLIANCE MONITORING CONDUCTED BY THE DEPARTMENT.~~

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~~(c) The use of face down prone restraints is prohibited in educational programs, unless determined necessary by a physician and documented in the student's current IEP.~~

~~(f)~~ The following aversive techniques of handling behavior are considered inappropriate and may not be used by agencies in educational programs:

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~~[(f) Agencies] (g) (F)~~ **School entities** have the primary responsibility for ensuring that **POSITIVE behavior [management] support** programs are in accordance with this chapter, including the training of personnel for the use of specific procedures, methods and techniques, and for having a written policy **and procedures** on the use of **POSITIVE behavior [management] support** techniques and obtaining parental consent prior to the use of **highly restraining RESTRAINTS** or intrusive procedures **AS PROVIDED IN SUBSECTION (C)**.

~~(h) Injuries requiring treatment by medical personnel that occur as the result of self injurious behavior or a nonaccidental act by another student shall receive prompt review within 10 school days. The review must include consideration as to whether the student causing the injury needs a behavioral assessment, reevaluation, a new or revised behavior plan or other change in program or placement. Recommended changes or determinations should be communicated to the parent and other IEP team members who may request that an IEP meeting be held.~~

~~{(g)} (i)~~ In accordance with their plans, agencies may convene **a review, including the use of** human rights committees, to oversee the use of **[restraining] restrictive** or intrusive procedures **[and] or** restraints.

**(H) SUBSEQUENT TO A REFERRAL TO LAW ENFORCEMENT, FOR STUDENTS WITH DISABILITIES WHO HAVE POSITIVE BEHAVIOR SUPPORT PLANS, AN UPDATED FUNCTIONAL BEHAVIOR ASSESSMENT AND POSITIVE BEHAVIOR SUPPORT PLAN SHALL BE REQUIRED.**

## **EDUCATIONAL PLACEMENT**

**§ 14.141. [Terminology related to educational placement] (Reserved).**

[Notwithstanding the requirements incorporated by reference with regard to educational placements, the following words and terms, when used in § 14.142 (relating to caseload for special education), have the following meanings:

*Autistic support*—Services for students with the disability of autism.

*Blind and visually impaired support*—Services for students with the disability of visual impairment, including blindness.

*Deaf and hard of hearing impaired support*—Services for students with the disabilities of deafness or hearing impairment.

*Emotional support*—Services for students with a disability whose primary identified need is emotional support.

***Full-time***—Special education classes provided for the entire school day, with opportunities for participation in nonacademic and extracurricular activities to the maximum extent appropriate, which may be located in or outside of a regular school.

***Itinerant***—Regular classroom instruction for most of the school day, with special education services and programs provided by special education personnel inside or outside of the regular class for part of the school day.

***Learning support***—Services for students with a disability whose primary identified need is academic learning.

***Life skills support***—Services for students with a disability focused primarily on the needs of students for independent living.

***Multiple disabilities support***—Services for students with multiple disabilities.

***Part-time***—Special education services and programs outside the regular classroom but in a regular school for most of the school day, with some instruction in the regular classroom for part of the school day.

***Physical support***—Services designed primarily to meet the needs of students with the disabilities of orthopedic or other health impairment.

***Resource***—Regular classroom instruction for most of the school day, with special education services and programs provided by special education personnel in a resource room for part of the school day.

***Speech and language support***—Services for students with the disability of speech and language impairment.]

**§ 14.142. [Caseload for special education] (Reserved).**

**[(a) This chart presents the maximum caseload allowed on a single teacher’s roll for each school district.**

Type of Service	Itinerant	Resource	Part-time	Full-time:
Learning Support	50	20	15	12
Life Skills Support	20	20	15	12 Elementary 15 Secondary
Emotional Support	50	20	15	12
Deaf and Hearing Impaired Support	50	15	10	8
Blind or Visually Impaired Support	50	15	15	12
Speech and Language Support	65			8

<b>Physical Support</b>	<b>50</b>	<b>15</b>	<b>12</b>	<b>12</b>
<b>Autistic Support</b>	<b>12</b>	<b>8</b>	<b>8</b>	<b>8</b>
<b>Multiple Disabilities Support</b>	<b>12</b>	<b>8</b>	<b>8</b>	<b>8</b>

**(b) A school district may request approval for a caseload chart which varies from that in subsection (a) as part of its special education plan consistent with § 14.104 (relating to educational plans). The caseload and supporting documents submitted shall:**

- (1) Ensure the ability of assigned staff to provide the services required in each student's IEP.**
- (2) Apply to special education classes operated in the school district.**
- (3) Provide a justification for why the chart deviates from the caseload chart in subsection (a).**
- (4) Describe the opportunities for parents, teachers and other interested parties to review and comment on the chart prior to its submission.**

**(c) Classes or programs with students from more than one district regardless of whether operated by a school district, intermediate unit, or agency shall follow the caseload chart of the district where the class or program is located. Intermediate unit itinerant services provided to multiple districts shall follow the caseload chart under subsection (a).**

**(d) Caseloads are not applicable to approved private schools.**

**(e) The Department may withdraw approval of variance in the caseload chart for a school district if its caseload is determined to be inadequate. The Department will consider at least the following indicators when making the determination:**

- (1) Graduation rates of students with a disability.**
- (2) Drop-out rates of students with a disability.**
- (3) Postsecondary transition of students with a disability.**
- (4) Rate of grade level retentions.**
- (5) Statewide and district-wide assessment results as prescribed by §§ 4.51 and 4.52 (relating to State assessment system; and local assessment system).**

**(f) The maximum age range shall be 3 years in elementary school (grades K-6) and 4 years in secondary school (grades 7-12). A student with a disability may not**



be placed in a class in which the chronological age from the youngest to the oldest student exceeds these limits unless an exception is determined to be appropriate by the IEP team and is justified in the IEP.]

#### **§ 14.143. Disciplinary placements.**

(a) Notwithstanding the requirements incorporated by reference in 34 CFR [300.519(b) (relating to change of placement for disciplinary removals)] 300.530(b) and 300.536 (relating to authority of school personnel; and change of placement because of disciplinary removals), a disciplinary exclusion of a student with a disability for more than 15 cumulative school days in a school year will be considered a pattern so as to be deemed a change in educational placement.

(b) A removal from school is a change of placement for a student who is identified with mental retardation, except if the student's actions are consistent with 34 CFR [300.520 (a)(2)(i) and (ii) (relating to authority of school personnel)] 300.530—300.535 (relating to authority of school personnel; determination of setting; appeal; placement during appeals; protections for children not determined eligible for special education and related services; referral to and action by law enforcement; and judicial authorities). [For this purpose, the definitions in 34 CFR 300.520(d) apply.]

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#### **§ 14.145. Least restrictive environment requirements.**

(a) Students with disabilities shall be educated in the least restrictive environment. Each school entity shall ensure that:

(1) To the maximum extent APPROPRIATE, and as provided in the IEP, the student with a disability is educated with ~~students who are not disabled~~ NON-DISABLED PEERS.

(2) Special classes, separate schooling or other removal of a student with a disability from the regular education class OCCURS ONLY when the nature of OR severity of the disability is such that education in the regular education class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily.

(3) A student may not be determined to require separate education because the child cannot achieve at the same level as classmates who do not have disabilities if the child can, with THE FULL RANGE OF supplementary aids and services, make MEANINGFUL progress in the goals included in the student's IEP.

(4) A student may not be removed from or determined to be ineligible for placement in a regular education classroom solely because of the nature or severity of the student's disability, or solely because educating the student in the regular education classroom would necessitate additional cost or FOR administrative convenience.

(5) School entities shall be required to provide ACCESS TO a full continuum of placement options.

**§ 14.146. Age range restrictions.**

(a) The maximum age range in specialized settings shall be 3 years in elementary school (grades K—6) and 4 years in secondary school (grades 7—12).

(b) A student with a disability may not be placed in a class in which the chronological age from the youngest to the oldest student exceeds these limits unless an exception is determined to be appropriate by the IEP team of that student and is justified in the IEP.

**EARLY INTERVENTION**

**§ 14.151. Purpose.**

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(b) Notwithstanding the requirements incorporated by reference, with regard to early intervention services:

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(2) The Department may provide for the delivery of some or all of these services through mutually agreed-upon written arrangements. Each mutually agreed-upon written arrangement may include memoranda of understanding under an approved plan submitted to the Department by [**an intermediate unit, school district**] **a school entity** or other agencies.

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**§ 14.153. Evaluation.**

Notwithstanding the requirements [**adopted by reference**] **in 34 CFR 300.122 (relating to evaluation)**:

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(3) The assessment [shall] **must** include information to assist the **MDT GROUP OF QUALIFIED PROFESSIONALS AND PARENTS** to determine whether the child has a disability and needs special education and related services [**and to determine the extent to which the child can be involved in appropriate preschool activities**].

(4) The following [**timeline**] **time line** applies to the completion of evaluations and reevaluations under this section:

(i) 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.

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(ii) Notwithstanding the requirements incorporated by reference in 34 CFR [**300.536**] **300.303** (relating to [**reevaluation**] **reevaluations**), a reevaluation report shall be provided within 60 **calendar** days from the date that the [**request**] **parental consent** for reevaluation was received [**from the parent or teacher, or from the date that a determination is made that conditions warrant a reevaluation**].

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#### **§ 14.154. IEP.**

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(d) Notwithstanding the requirements incorporated by reference, the following [**timelines**] **time lines** govern the preparation and implementation of IEPs:

(1) The IEP of each eligible young child shall be implemented as soon as possible, but no later than 14 **calendar** days after the completion of the IEP.

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(g) If an eligible young child moves from one early intervention agency to another in this Commonwealth, the new early intervention agency shall implement the existing IEP to the extent possible or shall provide services and programs specified in an interim IEP agreed to by the parents until a new IEP is developed and implemented [**and**] **or** until the completion of due process proceedings under this chapter.

(h) Every eligible young child receiving special education and related services provided for in the IEP developed prior to [**June 9, 2001**] **JULY 1, 2008** (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*), shall continue to receive the special education and related services under that IEP subject to the terms, limitations and conditions set forth in law.

**§ 14.155. Range of services.**

(a) 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.

(b) The IEP team shall [review the alternatives in subsection (c) in descending order, except for the options relating to services and programs provided in the home. Services provided in the home may be the least restrictive early intervention program for an eligible young child] recommend EARLY INTERVENTION services and programs to be provided in the least restrictive environment with appropriate and necessary supplementary aids and services. The placement options may include one or more of the following:

(1) Early childhood environment. Services provided in a typical preschool program with non-eligible young children.

(2) Early childhood special education environment. Services provided in a special education preschool program funded by the early intervention agency.

(3) Home environment. Services provided in the home.

(4) Services outside of the home environment.

(5) Specialized environment. Services provided in a specialized setting, including the following:

(i) An approved private school.

(ii) A residential school, residential facility, State school or hospital or special secure setting.

(iii) An approved out-of-State program.

(c) [The IEP team shall recommend services and programs be provided in a regular class or regular preschool program unless the IEP team determines that the IEP cannot be implemented in a regular class or regular preschool program even with supplemental aids and services. The placement options include the following:

(1) Regular preschool program or class for the entire school or program day with supportive intervention, including modifications to the regular program and individualization by the preschool program or classroom teacher.

(2) Regular preschool program or class for all or most of the school or program day, with supplemental aids and services provided by early intervention personnel.

(3) Early intervention services and programs provided in a specialized setting for most or all of the program day, with non-eligible young children.

(4) Early intervention services and programs provided in a specialized setting, with some programming provided in the regular preschool program or class and opportunities for participation with noneligible young children in play or other activities.

(5) Early intervention services and programs provided in the home, including services which are provided in conjunction with services provided in another setting.

(6) Early intervention services provided in a specialized early intervention program.

(7) Early intervention services and programs provided in a specialized setting, including the following:

(i) An approved private school.

(ii) A residential school, residential facility, State school or hospital or special secure setting on an individual or group basis, with parental consent.

(iii) An approved out-of-State program.]

(d) The duration of early intervention services, in terms of program days and years, shall accommodate the individual needs of eligible young children.

(1) The duration of early intervention services shall be developed by each early intervention agency **in accordance with the Mutually Agreed upon Written Arrangement (MAWA)** and shall be included in [its plans] **the MAWA's plan under § 14.104** (relating to educational plans).

**(2) Some eligible young children may lose skills over breaks and have difficulty in regaining these skills as evidenced through child performance data. In those cases, the IEP team shall consider whether services should be provided during the break period to maintain skills.**

~~[(e)] (d)~~ The caseloads of professional personnel shall be determined on the basis of ~~maximums allowed and the amount of time required to fulfill eligible young children's IEPs. The following caseloads shall be used in early intervention programs~~ THE AMOUNT OF TIME REQUIRED TO FULFILL ELIGIBLE YOUNG CHILDREN'S IEPs. THE FOLLOWING CASELOAD REQUIREMENTS SHALL BE USED FOR PRESCHOOL EARLY INTERVENTION PROGRAMS:

(1) [*Supportive intervention.* In a regular preschool program in which supportive intervention is the primary method of service, the caseload range shall be 10-40 children with no more than six eligible young children serviced in the same session. Supportive intervention includes consultation, integrated therapies and other instructional strategies.] Early intervention itinerant teachers. Teachers who provide services in a typical preschool, community program or the child's home, shall have a caseload range of 20—40 children, based on the duration and frequency of service as indicated on each IEP.

(2) [*Specialized setting.* In early intervention programs provided in a specialized setting, the staff ratio is based on the developmental levels of the children. At least one staff member shall be a certified professional. For children functioning at:

(i) *0-18 months*—One staff member for every three eligible young children, with a maximum class size of nine.

(ii) *18-36 months*—One staff member for every four eligible young children, with a maximum class size of 12.

(iii) *36 months and up*—One staff member for every six eligible young children, with a maximum class size of 18 children.]

Early intervention classroom teachers. Teachers who provide specialized instruction in a special education classroom, shall have a caseload range of three to six eligible young children based on developmental levels with a maximum of 35 children. For each additional child up to six children enrolled in the classroom, one additional adult shall be provided. EARLY INTERVENTION CLASSROOM TEACHERS, WHO PROVIDE SPECIALIZED INSTRUCTION IN AN EARLY INTERVENTION CLASSROOM, MAY HAVE UP TO SIX YOUNG CHILDREN IN THEIR CLASSROOM AND MAY HAVE ADDITIONAL CHILDREN UP TO A MAXIMUM OF 11, PROVIDED THAT ONE ADDITIONAL TEACHER OR PARAPROFESSIONAL IS ASSIGNED TO THE CLASSROOM.

(3) [*Home based program.* In early intervention programs in which the home based program is provided to eligible young children as the only program, the ratio is 10 to 20 eligible young children per teacher. This shall also include teachers of the visually impaired, hearing impaired, and orientation and mobility specialists.]

**Speech therapists. Speech therapists who provide services in classrooms, typical preschools, community programs, or the child's home shall have 25—50 children based on the duration and frequency of service as indicated on each IEP.**

**[(4) *Early intervention program--speech and language.* In early intervention programs, the speech and language itinerant program will be provided within a caseload of 10 to 50 eligible young children enrolled per teacher.**

**(5) *Early intervention program--physical and occupational therapies.* In early intervention programs where physical therapy or occupational therapy, or both, is specified on the IEP, individual caseloads are determined with consideration to the type of services delivered and the time required for those services.]**

## **PROCEDURAL SAFEGUARDS**

### **§ 14.161. [Prehearing conferences] (Reserved).**

**[The purpose of the prehearing conference is to reach an amicable agreement in the best interest of the student or young child.**

**(1) In addition to the requirements incorporated by reference in 34 CFR 300.503—300.505 (relating to prior notice by the public agency; content of notice; procedural safeguards notice; and parental consent), the notice shall provide for a parent to request the school district or early intervention agency in the case of a young child to convene a prehearing conference in instances when the parent disapproves the school district's proposed action or refusal to act.**

**(2) When a parent requests and the school district or early intervention agency in the case of a young child agrees to participate in a prehearing conference, the conference shall be convened within 10 days of receipt of the parent notice and shall be chaired by the superintendent, the early intervention agency representative or their designees.**

**(3) A parent or the school district or early intervention agency in the case of a young child may waive the right to a prehearing conference and immediately request an impartial due process hearing under § 14.162 (relating to impartial due process hearing and expedited due process hearing).**

**(4) If the prehearing conference results in agreement, the provisions under § 14.131 (relating to IEP) shall be applied.**

**(5) Within 5 days of the agreement, a parent may notify the school district or early intervention agency in the case of a young child, in writing, of a decision not to approve the identification, evaluation, recommended assignment or the provision of a free appropriate public education. When a parent gives notice not to approve the identification, evaluation, recommended assignment, or the provision of a free**

appropriate public education, or if the prehearing conference does not result in an agreement, the provisions under § 14.162 shall be applied.]

**§ 14.162. Impartial due process hearing and expedited due process hearing.**

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(c) A school district or early intervention agency may request a hearing to proceed with an initial evaluation or a reevaluation when **[the district has not obtained parental consent as required by 34 CFR 300.505(c) (relating to parental consent)] a parent fails to respond to the district or early intervention agency's proposed evaluation or reevaluation.** When a parent rejects the **[district's] district or early intervention agency's** proposed identification of a child, proposed evaluation, proposed provision of a free appropriate public education or proposed educational placement, other than the initial placement, the school district or early intervention agency may request an impartial due process hearing. **If the parent fails to respond or refuses to consent to the initial provision of special education services, neither due process nor mediation may be used to obtain agreement or a ruling that the services may be provided.**

(d) The hearing for a **SCHOOL AGED** child with a disability or thought to be a child with a disability shall be ~~conducted [by] on behalf of and~~ held in the school district at a place and time reasonably convenient to the parents and child involved. A hearing for an eligible young child or thought to be an eligible young child shall be conducted ~~[by] on behalf of the early intervention agency~~ at a place and time reasonably convenient to the parents and child involved. These options shall be set forth in the notice provided for requesting a hearing.

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(o) The decision of the hearing officer regarding a child with a disability or thought to be a child with a disability may be appealed ~~to a panel of three appellate hearing officers. The panel's decision may be appealed further~~ to a court of competent jurisdiction. ~~In notifying the parties of its decision, the panel shall indicate the courts to which an appeal may be taken. The decision of the hearing officer regarding an eligible young child may be appealed to a court of competent jurisdiction.~~ In notifying the parties of the decision, the hearing officer shall indicate the courts to which an appeal may be taken.

(p) The following applies to coordination services for hearings and to hearing officers ~~and appellate hearing officers:~~

(1) The Secretary may contract for coordination services ~~in support of FOR~~ hearings ~~conducted by local school districts~~ **RELATED TO A CHILD WITH A DISABILITY OR THOUGHT TO BE A CHILD WITH A DISABILITY.** The



coordination services ~~shall be provided on behalf of school districts and~~ may include arrangements for stenographic services, arrangements for hearing officer services **(INCLUDING THE COMPENSATION OF HEARING OFFICERS)**, scheduling of hearings and other functions in support of procedural consistency and the rights of the parties to hearings.

~~(2) If a school district chooses not to utilize the coordination services under paragraph (1), it may conduct hearings independent of the services if it has obtained the Secretary's approval of procedures that similarly provide for procedural consistency and ensure the rights of the parties. In the absence of approval, a school district which receives a request for an impartial due process hearing shall forward the request to the entity providing coordination services under paragraph (1) without delay.~~

~~(3) The Secretary will contract for the services of hearing officers for hearings related to an eligible young child or thought to be eligible young child and for appellate hearing officers for school aged students and may compensate the hearing officers and appellate hearing officers for their services.~~ The compensation OF HEARING OFFICERS does not cause ~~the hearing officers and appellate hearing officers~~ THEM to become employees of the Department.

~~(4) (2) Neither a~~ A hearing officer ~~nor an appellate hearing officer~~ may NOT be an employee or agent of ~~a~~ THE school entity in which the parents or ~~student or young~~ THE child WITH A DISABILITY OR THOUGHT TO BE A CHILD WITH A DISABILITY resides, or of an agency ~~which~~ THAT is responsible for the education or care of the ~~student or young~~ child WITH A DISABILITY OR THOUGHT TO BE A CHILD WITH A DISABILITY or by a person having a personal or professional interest that would conflict with the person's objectivity in the hearing. A hearing officer ~~or appellate hearing officer~~ shall promptly inform the parties of a personal or professional relationship the officer has or has had with any of the parties.

(q) The following [~~timeline~~] time line applies to due process hearings:

(1) A hearing shall be held [~~within 30 days after a parent's or school district's initial request for a hearing. If the school district uses the coordination services under subsection (p), the parent's request must be forwarded by the school district within 5 days of the receipt of the request to the service agency supported by the Secretary~~] after the conclusion of the resolution session under 34 CFR 300.510 (relating to resolution process) or after one of the parties withdraws from mediation or the parties agree to waive or agree to end the resolution session.

(2) The hearing officer's decision shall be issued within 45 days after the [~~parent's or school district's request for a hearing~~] the resolution or mediation session ends without resolution or agreement date.

~~(3) The appellate hearing panel shall render a decision within 30 days after a request for review.~~

(4) A hearing officer ~~or appellate hearing officer~~ may grant specific extensions of time beyond the periods in paragraphs (1)—(3) at the request of either party.

~~(5)~~ (4) If an expedited hearing is conducted under ~~34 CFR 300.528 (relating to expedited due process hearings)~~ 34 CFR 300.532 (RELATING TO APPEALS), the hearing officer decision shall be mailed within ~~45~~ 30 SCHOOL days of the public agency's receipt of the request for the hearing without exceptions or extensions.

~~(r) If the decision of the hearing officer is appealed, the panel of appellate hearing officers as provided in subsection (o) shall conduct an impartial review of the hearing. The review shall do the following:~~

~~(1) Examine the entire hearing record.~~

~~(2) Ensure that the procedures at the hearing were consistent with the requirements of due process.~~

~~(3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights under subsections (e)—(n) apply.~~

~~(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the panel of appellate hearing officers.~~

~~(5) Make an independent decision on completion of the review.~~

~~(6) Give to the district a written copy of the findings of fact and decisions and provide at the option of the parents, a written or electronic copy of the findings of fact and decisions.~~

~~(s)~~ Each school district and early intervention agency shall keep a list of the persons who serve as hearing officers. The list shall include the qualifications of each hearing officer. School districts and early intervention agencies shall provide parents with information as to the availability of the list and shall make copies of it available upon request.

~~(t)~~ (S) Except as provided in 34 CFR 300.533 (relating to placement during appeals), during the pendency of any mediation proceeding conducted in accordance with 34 CFR 300.506 (relating to mediation), unless the school entity and the parents of the child agree otherwise, the child that is the subject of the mediation shall remain in the current education placement until the mediation process is concluded.

~~(u) (T) Impartial due process hearings, appeal panel proceedings and the hearing officers who conduct the hearings and proceedings shall be subject to 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).~~

~~(v) The Department will report to the Board by September 1 each year on the number of impartial due process hearings and appeal panel proceedings held during the previous school year. The report will also provide a Statewide summary of the results of the proceedings HEARINGS in a manner that will not violate the confidentiality of children and families. The report will also address actions taken during the previous school year and future plans to strengthen the activities of due process hearings and appeal panel HEARING proceedings.~~

**§ 14.163. Resolution session.**

The resolution session required under 34 CFR 300.510 (relating to resolution process) will be available to parents of both school age and eligible young children with disabilities. Parent advocates may attend the sessions.

## CHAPTER 14 PUBLIC COMMENTS

## DURING AND AFTER OFFICIAL COMMENT PERIOD

MR/M	FIRST	LAST	JR	TITLE	DEPARTMENT	ORGANIZATION/SCHOOL	ADDRESS 1	ADDRESS 2	CITY	ZIP	STA
Dr	Maureen	Barber-Carey		Executive Vice President		Dr Gertrude A Barber National Institute	100 Barber Place		Erie	16507 1899	PA
Dr	Kathleen	Bastow		Quality Assurance & Compliance Coordinator		Dr Gertrude A Barber National Institute	100 Barber Place		Erie	16507 1899	PA
Mrs	M B	Whisler					2220 North Main Street		Jacobus	17407	PA
Ms	Veronica	Thomas					RR1 Box 104		Kingsley	18826	PA
Ms	Sally	Schuster					5083 Lakewood Drive		Gibsonia	15044	PA
Ms	Carolyn	Dorm					110 Fulmer Avenue		Stroudsburg	18360	PA
Mr	Dave	Von Hofen					1505 Orchard Street		Freedom	15042	PA
Ms	Denise	Muir					4326 Carney Avenue		Erie	16510	PA
Mr	David	Romanyshyn					106 South 12th Street		Lewisburg	17837	PA
Ms	Nancy	Moser					3930 Harlansburg Road		Slippery Rock	16057	PA
Ms	Marla	Lupkin				Pennsbury Education Support Association	702 Hood Boulevard		Fairless Hills	19030	PA
Ms	Deborah	Fige					817 Wagner Road		Youngwood	15697	PA
Mr	Jeff	Ebert					263 Lake Meade Drive		East Berlin	17216	PA
Ms	Holly	Harrngton		Treasurer		Bangor Area ESP	1318 Ackermanville Road		Bangor	18013	PA
Mr	Joseph	Glazenski	MSPT				216 Eagle Road		Mountain Top	18707	PA
Ms	Lon	Arco					PO Box 185		Robertsdale	16674	PA
Ms	Cindra	Mayak					943 Ralphon Road		Stoystown	15563	PA
Ms	Diane	Crocco					600 Hidden Valley Road		King Of Prussia	19406	PA
Ms	Ivie	Simons		President		Mountain View ESP	RR1 Box 320		Kingsley	18826	PA
Ms	Deborah	St Clair					218 Main Street		Boswell	15531	PA
Ms	Joyce	Shade					1023 Spring Street		Reading	19604	PA
Ms	Linda	Swope					4132 Grandview Drive		Gibsonia	15044	PA
Ms	Deborah	McCarter					211 West Waverly Road		Glenside	19038	PA
Mrs	Marsha	Fabian					52 North Railroad Avenue		New Holland	17557	PA
Ms	Mary	Flaherty Artuso					7 Fry Road		Boston	15135	PA
Ms	Susan	Clark					102 Fairview Avenue		Waynesburg	15370	PA
Ms	Jacqueline	Crouse					3311 Jones Boulevard		Easton	18045	PA
Ms	Madelyn	Bognatz					RR1 Box 68B		Uniondale	18470	PA
Ms	Brenda	Daniels					RR2 Box 184C		Kingsley	18826	PA
Ms	Veronica	Thomas					RR1 Box 104		Kingsley	18826	PA
Ms	Theresa	Semple					439 Lippencott Run Road		Waynesburg	15370	PA
Ms	Karen	Voorhees					514 Route 31 North		Ringoes	08551	NJ
Ms	Casey	Blake		Special Education Teacher		Philipsburg Osceola Area School District	100 130 North 6th Street		Philipsburg	16866	PA
		Resident					803 Berrington Court		Bethel Park	15102	PA
Ms	Darlene	Lenzel					520 Daily Drive		North Huntingdon	15642	PA
Ms	Barbara	Sedley					5128 Orchard Drive		Bethel Park	15102	PA
Ms	Victoria	Rice Campbell		President		Allegheny IU Unit Education Association	14731 Nicole Drive		North Huntingdon	15642	PA
Ms	Judy	Yoder					380 High Street		Souderton	18964	PA
Ms	Suzanne	Brannagan					320 Whittier Drive		Pittsburgh	15235	PA
Ms	Ilene	Shane		Chief Executive Officer		Disability Rights Network of Pennsylvania	1414 North Cameron Street Suite C		Harrisburg	17103	PA
Ms	Bernadette	Black Berardinelli	RDR CRR	Official Court Reporter			100 South Broad Street 2nd Floor		Philadelphia	19110	PA
Ms	Janet	Fasy					No Address Provided				PA
Mr	Vernon	Herzog					603 Crescent Drive		Glenolden	19036	PA
Ms	Jody	Capno					386 South Main Street		Pleasant Gap	16823-3518	PA
Ms	Karen	Earley	RDR CRR	Official Court Reporter			619 U S Courthouse & Post Office	700 Grant Street	Pittsburgh	15219	PA
Mr	M Christoph	Tabakin		Director of Quality Assurance		Melmarks Approved Private School	2600 Wayland Road		Berwyn	19312	PA
Mr	William	Martens		Assistant Executive Director		Intermediate Unit 17	PO Box 3609		Williamsport	17701	PA
Mr	Richard	DiObilda		Director of Special Education	Special Education Department	Octorara Area School District	228 Highland Road Suite 1		Atglen	19310-1603	PA
Ms	Judith	Czarnacki					515 Maple Point Drive		Langhorne	19047	PA

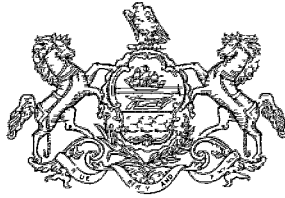
Ms	Jennifer	Dan				606 Victoria Drive		Montgomeryville	18936	PA	
Mr	Paul	Barr		Dir of Special Education & Pupil Services		1051 Koser Road		Mount Joy	17552	PA	
Mr	William	Batzel				134 Batzel Road		Johnstown	15906	PA	
Ms	Cassandra	Auerbach				Citizens Commission on Human Rights	No Address Provided			PA	
Ms	Maureen	Broderick	RPR			3152 Glenview Street		Philadelphia	19149	PA	
Mr	Lawrence	Brck				3017 Midvale Avenue		Philadelphia	19129	PA	
Ms	Joyce	Cole				461 Middle Street		Pittsburgh	15227-3844	PA	
Ms	Salie	Lynagh		Director		VALUE	1414 North Cameron Street Suite C	Harrisburg	17103	PA	
Dr	Ambrose	Finnegan		Director	Student Support Services	Chester County Intermediate Unit	455 Boof Road	Downingtown	19335	PA	
Dr	Timothy	Knoster					13 Mont Calm Place	Lewisburg	17837	PA	
Ms	Callie	DeSimone					4 Plainview Drive	Coraopolis	15108	PA	
Ms	Sandra Jane	Metzler					10 Julia Lane	Waterford	16441	PA	
Ms	Catherine	Muhammad					5707 Malvern Avenue	Philadelphia	19131	PA	
Ms	JoAnn	Castle					322 Metoxet Street	Ridgway	15853	PA	
Ms	Ann	Smith					527 Onole Drive	West Chester	19380	PA	
Ms	Stacey	Troy					No Address Provided			PA	
Dr	Valerie	Burnett		Director of Pupil Services		Rose Tree Media School District	308 North Olive Street	Media	19063-2493	PA	
Ms	Vivian	Hinkle					4329 Meadowridge Lane	Collegeville	19426	PA	
Ms	Karen	Stickler					32 Harmony Drive	Johnstown	15909	PA	
Ms	Kelly	Dickey					609 East Pine Street	Olyphant	18447	PA	
Ms	Randi	Chud					2050 Butternut Drive	Huntingdon Valle	19006	PA	
Ms	Nancy	Payton Checchia		Director of Special Education		Penn-Delco School District	2821 Concord Road	Aston	19014-2995	PA	
Ms	Lisa	Feissner	RDR CRR	Chair Government Relations		Pennsylvania Court Reporters Association	1143 Northern Boulevard #346	Clarks Summit	18411	PA	
Mr	Wayne	Proctor					2113 Lewis Street	McKeesport	15131	PA	
Ms	Georganna	Kresl					214 South 14th Street	Lewisburg	17837-1764	PA	
Dr	Felicia	Hurewitz				Autism Society of America	4371 Northern Pike	Monroeville	15146	PA	
Ms	Emily	Leader		Deputy Chief Counsel		Pennsylvania School Boards Association	PO Box 2042	Mechanicsburg	17055 0790	PA	
Ms	Susan	Geiger					129 Whisperwood Drive	Dingmans Ferry	18328	PA	
Ms	Anne	Loeffler					PO Box 164	Codorus	17311	PA	
Ms	Susan	Willis		Special Education Director		Central Intermediate Unit	345 Link Road	West Decatur	16878-9757	PA	
Ms	Kern	Bloom		Executive Director		Central Intermediate Unit	345 Link Road	West Decatur	16878-9757	PA	
Mr	Dan	Brant		Special Kids Network System of Care		Center for Schools and Communities	275 Grandview Avenue Suite 200	Camp Hill	17011	PA	
Ms	Lynn	Cromley		Director		Center for Schools and Communities	275 Grandview Avenue Suite 200	Camp Hill	17011	PA	
Ms	Nina	Esposito-Visgits		Chairperson	AFT PA Special Education Cor	AFT Pennsylvania	10 South 19th Street	Pittsburgh	15203	PA	
Mr	Robert	Walters		Executive Director		Crisis Prevention Institute Inc	3315H North 124th Street	Brookfield	53005	WI	
Ms	Linda	Rainey					7717 Lakewood Drive	Fairview	16415	PA	
Mr	Charles	Robey					PO Box 1224	3939 Gatehouse Lane	Skippack	19474	PA
Ms	Sherry	Kidd					PO Box 145	Durham	18039	PA	
Mr	David	Loeffler					PO Box 164	Codorus	17311	PA	
Ms	Lois	Runkle					105 Green Cove Road	Spring Mills	16875 7900	PA	
Ms	Evalynn	Welling	Esq			Community Justice Project	1705 Allegheny Building	429 Forbes Avenue	Pittsburgh	15219	PA
Mr	Christopher	Strayer		Legal Intern		Community Justice Project	1705 Allegheny Building	429 Forbes Avenue	Pittsburgh	15219	PA
Ms	Sharon	Denham				Learning Disabilities Association of PA Inc	Toomey Building	PO Box 208	Uwchland	19480	PA
Ms	Deborah	Rhodes		President		Learning Disabilities Association of PA Inc	Toomey Building	PO Box 208	Uwchland	19480	PA
Ms	Amy	Guthrie		Advocate		Achieva	711 Bingham Street	Pittsburgh	15203-1007	PA	
Ms	Patricia	Arnos					635 Ardmore Avenue	Ardmore	19003-1831	PA	
Mr	Stephen	Surovick		Executive Director		The ARC of Pennsylvania	Suite 8 Executive House	101 South Second Street	Harrisburg	17101	PA
Mr	Dennis	Krivacek					602 Louise Court	Cannonsburg	15317	PA	
Ms	Edna	Donovan	RMR	President		Philadelphia Official Court Reporters Assoc	100 South Broad Street 2nd Floor	Philadelphia	19110	PA	
Ms	Ruth	Furman		Executive Director of Special Education		Upper Darby School District	4611 Bond Avenue	Drexel hill	19026-4592	PA	

Ms	Gail	Chies			1765 West Union Boulevard	Bethlehem	18018	PA
Ms	Lonn	DePolo		Educational Advocate	Mental Health Association in Butler County	Butler	16001-5742	PA
Ms	Joan	Bergquist		ASAP Treasurer	Autism Support and Advocacy in PA	Devon	19333	PA
Ms	Julie	Jordan	RMR	Registered Ment Reporter		Clarks Summit	18411	PA
Dr	Kathy	Brill		President	Pennsylvania TASH	Mechanicsburg	17050	PA
Ms	Laura	Bennett		Sr Policy Analyst/Compliance Officer	PA Association of Resources	Harrisburg	17102	PA
Ms	Nancy	Bumbarger				Reynoldsville	15851	PA
Ms	Shan	Draayer				King of Prussia	19406-1857	PA
Mr	Lawrence W	Emark				Pittsburgh	15237-4184	PA
Ms	Camille	Desnoyers				Normstown	19403-4279	PA
Ms	Lynne	Harrison				Collegeville	19426-3430	PA
Ms	Renee	Wright				Kennett Square	19348-1736	PA
Mr	Don	Broderick				Scranton	18505-2168	PA
Ms	Deborah	Tuttle				Greenville	16125-9267	PA
Mr	Christopher	Watson				Downingtown	19335-3210	PA
Ms	Sheila	Reiber				Hermitage	16148-3220	PA
Ms	Brenda	Jewell				Hermitage	16148-3220	PA
Mr	David	Farrand				Hermitage	16148-6707	PA
Mr	Brian Patrick	McLaughlin				Erie	16506-3225	PA
Ms	Leslie	Powell				Hermitage	16148-3220	PA
Ms	Tammie	Gasior				Sharon	16146-4108	PA
Ms	Amy	Koegler				Berwyn	19312-2519	PA
Mr	William	Burnett	JR			Bristol	19007-3502	PA
Mr	Jeffrey	Iseman				Dauphin	17018-9486	PA
Ms	Michelle	Smithman				Dresher	19025-1212	PA
Ms	Olayemi	Gbadamosi				Mechanicsburg	17050-7656	PA
Ms	Shirley	Rifle				Hermitage	16148-3220	PA
Mr	Robert	Beach				Sharon	16146-3629	PA
Ms	Christna	Kilby				Lancaster	17601-6020	PA
Ms	Dolores	Bostak				Harrison City	15636-1301	PA
Ms	Margaret	Thomas				East Norriston	19401-1581	PA
Ms	Lisa	Jochum				Wayne	19087-2454	PA
Ms	Deborah	Leggens				Greensburg	15601-6988	PA
Ms	Constance	Lupatsky				Mount Carmel	17851-1943	PA
Mr	Zmaragdo	Klein				Broomall	19008-1516	PA
Ms	Nicole	Emswiller				Sharon	16146-1103	PA
Ms	Migdalia	Neely				East Stroudsburg	18302-8630	PA
Ms	Kim	Dodson				Pittsburgh	15227-2407	PA
Ms	Charleen	McGrath				West Conshohoc	19428-2915	PA
Ms	Nicole	Flamer				Coatesville	19320-3373	PA
Ms	Judy	Pamer				Beaver	15009-2412	PA
Ms	Kimberly	Krug				Ashville	16613-7605	PA
Ms	Dorothy	Horvath				Sewickley	15143-9567	PA
Ms	Nicole	Henshaw				Pittsburgh	15212-1253	PA
Ms	Debbie	Fabio				Cranberry Towns	16066-6384	PA
Ms	Susan	Rhodes				Lewisstown	17044-9238	PA
Mr	Steve	Surgvec				Lewisberry	17339-9117	PA
Mr	Chuck	Carnahan				Johnsonburg	15845	PA
Mr	Trond	Harman				New Oxford	17350-9744	PA
Ms	Joan	Sechrist				Lebanon	17042-9570	PA

Ms	Diane	Schlegel			118 Barrett Road	Willow Grove	19090-3117	PA
Ms	Bernice	Tuckerman			10201 Bustleton Avenue C 49	Philadelphia	19116-3761	PA
Ms	Regina	Conway			1358 Fairy Hill Road	Jenkintown	19046-2926	PA
Ms	Holly	Steiner			2349 B Wallace Street	Philadelphia	19130-3127	PA
Ms	Michele	Mailman			837 Timber Lane	Dresher	19025-1811	PA
Ms	Camilla	Lange			412 Blaker Drive	East Greenville	18041-1761	PA
Ms	Kim	Lane			PO Box 628	Mars	16046-0628	PA
Ms	Kathy	Carver			65 Orchard Lane	Berwyn	19312-1253	PA
Ms	Anne	Painter			185 Brookside Avenue	Washington	15301-5505	PA
Mr	Bill	Grove			211 Norman Way	Erne	16508-2964	PA
Ms	Susan	Riffe			850 North Hermitage Road	Hermitage	16148-3220	PA
Mr	Mark	Frew			431 Jackson Avenue	Altoona	16602-6419	PA
Ms	Diane	Reisinger			305 Timber Ridge Road	Marysville	17053-9790	PA
Ms	Kathleen	Zielenbach			8908 Rising Sun Avenue	Philadelphia	19115-4533	PA
Ms	Jennifer	Searcy			575 East Main Street	Uniontown	15401-4914	PA
Ms	Cindy	Duch			3016 Greenridge Drive	Verona	15147-2222	PA
Ms	Dee	Kinkopf			412 Patterson Road	Bethel Park	15102-1504	PA
Ms	Ilene	Greenstone			6327 Phillips Avenue	Pittsburgh	15217-1807	PA
Ms	Lori	Messmer			1153 Buente Street	Pittsburgh	15212-3501	PA
Mr	Ed	Williams			511 Avondale Road	Wallingford	19086-6401	PA
Ms	Pam	Klipa			101 South Second Street Suite 8	Harrisburg	17101-2535	PA
Ms	Elaine	Dryden			1 Eleanor Drive	Lincoln University	19352-9321	PA
Mr	Omar	Sanders			111 Aspen Drive	Downingtown	19335-1099	PA
Ms	Cynthia	Keenan			1743 Green Valley Road	Havertown	19083-2520	PA
Ms	Bernice	Tuckerman			10201 Bustleton Avenue C49	Philadelphia	19116-3761	PA
Mr	Jon	Steenon			5026 East State Street	Hermitage	16148-9449	PA
Ms	Robin	Watt			18 South Front Street	Greenville	16125-2264	PA
Ms	Cathy	Rocca Meier			2528 South 5th Street	Philadelphia	19148-4619	PA
Ms	Arlene	Horkey			390 Rexford Drive #75	Hermitage	16148-2609	PA
Ms	Rhonda	Paglia			347 Butterfly Lane	Hermitage	16148-3577	PA
Ms	Lisa	Kray			226 North Cascade Street	New Castle	16101-3304	PA
Mr	D L	Knighht			315 Boyers Road	Harrisville	16038-1205	PA
Ms	Linda	Moser			224 Jefferson Street	Swedesburg	19405-1727	PA
Ms	Betsy	Snyder			2142 Reindeer Court	Gilbertsville	19525-9268	PA
Mr	Fred	Krause			368 Heritage Drive	Gettysburg	17325-8935	PA
Ms	Susanne	Tuckerman			1017 Delray Street	Philadelphia	19116-3403	PA
Ms	Moirra	Rowan			RR3 Box 3184	Stroudsburg	18360-9334	PA
Ms	Beth	Eagen			103 Develin Drive	Phoenixville	19460-1505	PA
Ms	Lynn	Wagner			108 Windy Hollow Drive	Phoenixville	19460-2817	PA
Ms	Kann	Fox			116 Dudley Avenue 1st Floor	Narberth	19072-2237	PA
Ms	Erin	McCann			2996 Horseshoe Drive	Collegeville	19426-1467	PA
Ms	Maria	Antonoulis			24 Jack Ladder Circle	Horsham	19044	PA
Ms	Debra	Schafer			PO Box 973	Exton	19341-0913	PA
Ms	Barb	Zimmerman			1316 Ridgeview Circle	Downingtown	19335-3625	PA
Ms	Barb	Jumper			225 East Hillcrest Drive	Carlisle	17013-1130	PA
Ms	Sally	Machemer			3584 Evergreen Road	Pulaski	16143-3610	PA
Ms	Holly	Knauer			4 Stanbridge Street	Norristown	19401-4430	PA
Mr	Ernesto	Barnabas			2043 A West Rock Road	Perkasie	18944-2011	PA
Ms	Mar	Vial			222 Central Drive	Phoenixville	19460-2049	PA
Ms	Alexandrea	Robinson			918 West Waldheim Road	Pittsburgh	15215-1839	PA

Ms	Cynthia	Dias				197 Dunn Station Road		Prosperity	15329-1625	PA
Ms	Rikki	Kish				3602 Knape Street		Beaver Falls	15010-2134	PA
Ms	Susan	Pagano				1717 Christopher Lane		Norristown	19403-3365	PA
Ms	Pamela	Zotyria				183 Market Street Suite 102B		Kingston	18704-5444	PA
Mr	Alan	Anderson				804 Yuma Trail		Mercer	16137-9780	PA
Ms	Phyllis	Cardillo				944 Latonka Drive		Mercer	16137-9746	PA
Ms	Barbara	Hightree				27 Lebanon Avenue		Greenville	16125-1919	PA
Ms	Elizabeth	Capparella				28-6 Wister Way		Reading	19606-3222	PA
Ms	Catherine	Martell				1114 French Street		Sharon	16146-2853	PA
Ms	Jo Ellen	Meyer				1803 Quarry Road		Lebanon	17046-8012	PA
Ms	Amber	Mintz				528 Hill Road		Wernersville	19565-1816	PA
Ms	Jill	McIntosh				629 Nelson Avenue		Lansdale	19446-2733	PA
Mr	Larry	Bassett				5574 Banbridge Drive		Harrisburg	17112-2201	PA
Ms	Maureen	Esposito				1633 Stonington Circle		North Wales	19454-3676	PA
Mr	David	Casazza				179 Oxford Circle		Norristown	19403-2940	PA
Ms	Heidi	Cook				102 Center Street		Forty Fort	18704-5018	PA
Ms	Marlee	Juranovich				850 North Hermitage Road		Hermitage	16148-3220	PA
Ms	Sharon	MacNamara				1023 Wedgewood Lane		West Chester	19382-2339	PA
Dr	William	Shoemaker		Superintendent	Bermudian Springs School District	7335 Carlisle Pike		York Springs	17372-8807	PA
Mr	William B	Chan	III	Superintendent	Fairfield Area School District	4840 Fairfield Road		Fairfield	17320	PA
Dr	Thomas	Hensley		Superintendent	Southern York County School District	PO Box 128		Glen Rock	17327-0128	PA
Ms	Donna	Hake		Director of Pupil Services	Spring Grove Area School District	100 East College Avenue		Spring Grove	17362	PA
Dr	David	Stricker		Superintendent	Spring Grove Area School District	100 East College Avenue		Spring Grove	17362	PA
Dr	Barbara	Rupp		Superintendent	South Western School District	225 Bowman Road		Hanover	17331-4297	PA
Mr	Robert	Cline		Special Education Supervisor	Southern York County School District	PO Box 128		Glen Rock	17327-0128	PA
Mr	Barry	Dallara		Superintendent	Waynesboro Area School District	210 Clayton Avenue		Waynesboro	17268	PA
Mrs	Jean	Purnell		Director of Special Education	Waynesboro Area School District	210 Clayton Avenue		Waynesboro	17268	PA
Dr	Daria	Pianowski		Superintendent	Eastern York School District	PO Box 150		Wrightsville	17368	PA
Ms	Poly	Lamison		Supervisor of Special Education	Eastern York School District	PO Box 150		Wrightsville	17368	PA
Dr	Frank	Herron		Superintendent	Red Lion Area School District	696 Delta Road		Red Lion	17356-9185	PA
Ms	Laura	Fitz		Supervisor of Special Education	Red Lion Area School District	696 Delta Road		Red Lion	17356-9185	PA
Mr	Daniel	Trimmer		Superintendent	Conewago Valley School District	130 Berlin Road		New Oxford	17350	PA
Ms	Janet	Trimmer		Director of Special Education	Conewago Valley School District	130 Berlin Road		New Oxford	17350	PA
Dr	Kathryn	Orban		Superintendent	York Suburban School District	1800 Hollywood Drive		York	17403-4256	PA
Dr	Gail	Vogel		Director of Special Education	Colonial Intermediate Unit 20	6 Danforth Drive		Easton	18045-7899	PA
Dr	Dean	Casello		Superintendent	Union Area School District	500 South Scotland Lane		New Castle	16101-1399	PA
Mr	Richard	Buccharanen		Superintendent	South Park School District	2005 Eagle Rdge Road		South Park	15129	PA
Mr	Jason	Pederson				731 Zermatt Drive		Hummelstown	17036	PA





**Commonwealth of Pennsylvania**  
**STATE BOARD OF EDUCATION**

May 5, 2008

Mr. Kim Kaufman  
Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, 333 Market Street  
Harrisburg, PA 17126

Dear Mr. Kaufman:

Enclosed is a copy of final form State Board of Education regulation 22 Pa. Code, Chapter 14 – Special Education Services and Programs (#006-306) for review and action by the Commission pursuant to section 5(c) of the Regulatory Review Act.

The State Board of Education will provide the Commission with any assistance it requires to facilitate a thorough review of this final-form regulation.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Jim Buckheit".

Jim Buckheit  
Executive Director

Enclosure

cc: Secretary Zahorchak  
Gregory Dunlap, Esq.  
Teresa Colarusso

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER:	6-306	<b>RECEIVED</b>
SUBJECT:	SPECIAL EDUCATION SERVICES AND PROGRAMS	<b>MAY - 5 REC'D</b>
AGENCY:	STATE BOARD OF EDUCATION	INDEPENDENT REGULATORY REVIEW COMMISSION

**TYPE OF REGULATION**

Proposed Regulation

X Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a.                      With Revisions                      b.                      Without Revisions

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
5/5/08	<i>Christa Clissett</i>	HOUSE COMMITTEE ON EDUCATION
5-5-08	<i>Spencer</i>	MAJORITY CHAIRMAN <u>James R. Roebuck, Jr.</u>
5-5-08	<i>A. R. Burczu</i>	SENATE COMMITTEE ON EDUCATION
5/5	<i>D.H.</i>	MAJORITY CHAIRMAN <u>James J. Rhoades</u>
5/5/08	<i>76MS/m</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	<del>ATTORNEY GENERAL (for Final Omitted only)</del>
_____	_____	<del>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</del>

May 5, 2008