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From: Kaufman, Kim
Sent: Tuesday, September 16, 2008 6:26 AM
To: Schalles, Scott R.; Gelnett, Wanda B.; Wilmarth, Fiona E.; Johnson, Leslie A.; Lewis, Emery, Heather; Outreach
Subject: Fw: IRRC #2635 - Economic and Fiscal Impact of De Minimis Compliance

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REVIEW COMMISSION

Attorney Clark #3

----- Original Message -----

From: James Clark <JayClark@jamesclarklaw.net>
To: Kaufman, Kim
Sent: Mon Sep 15 22:49:24 2008
Subject: IRRC #2635 - Economic and Fiscal Impact of De Minimis Compliance

Dear Mr. Kaufman:

Please accept the following as public comment addressing the economic and fiscal impact of the above-referenced final-form regulation. The focus of my comments here are limited to the costs of compliance as provided by the agency and the costs of noncompliance.

In making my comments, I refer the Commissioners to the Regulatory Analysis Form (RAF).

In Question 20 of the RAF, the agency provides a cost of \$21,000 per year for five years. As explained in Question 20a, this yearly figure is calculated at \$2,100 multiplied by ten (10) school districts per year.

There are 501 school districts in Pennsylvania. At this rate, the cyclical compliance required by Section 16.6(d) will take fifty (50) years to complete.

This is not a typo by the agency. The same information was provided by the agency in the submittal in the RAF for the proposed regulations.

I refer to this as de minimis compliance.

The House Education Committee recognized this problem and addressed it specifically in its comments on the proposed regulations:

It is recommended that specific compliance monitoring language be implemented in these regulations and should state expectations and requirements for comprehensive compliance, and penalties for not doing so. The idea is to relieve parents of the burden of ensuring the implementation of Chapter 16. Currently the Department is conducting limited monitoring at a rate of 10 school districts per year, which would take 50 years to complete for all districts. (emphasis added)

As the agency highlights in Question 19 of the RAF, it was not until the fall of 2006 that the Department of Education began to conduct compliance monitoring under its statutory duty. This duty to enforce the statute predates the separation in 2000 of the regulations for gifted children from those for children with disabilities. Prior to the creation of Chapter 16, the Department of Education had met its statutory obligation for all exceptional children under the same, more substantial compliance schedule. To my knowledge, the Department has made no specific request for funds in its budget request for the 2008 fiscal year. The \$900M+ figures for expenditures provided in Question 20b of the RAF is for Special Education, which is mostly the federal funds for children with disabilities. This is not and should not be interpreted as the cost of the special education of gifted students.

To quote the agency's own words:

The Board believes the changes to this regulation provide an appropriate balance to assure that the compliance monitoring policy of the Department is described in a publicly available Basic Education Circular while providing the Department the flexibility to conduct monitoring consistent with annual staff availability, financial resources and

workload priorities.

The compliance monitoring for the education of our gifted students deserves more than the failed regulatory policy of the State Board of Education and the apparent disdain of the Department of Education to fulfill its statutory duty to enforce the statute and the regulations thereunder.

The real economic impact which the agency fails to recognize or acknowledge is the cost of individual compliance by parents against their school districts causing both to spend limited resources on systematic problems that are better addressed through thorough and detailed compliance monitoring and complaint-management systems. Personally, I have spent in excess of \$10,000 in one due process case while our school district likely spent many times that amount in attorney fees. This does not even begin to consider the costs of teachers and administrators preparing for trial.

Add to this, the effect of a putting a young child in the middle of such a conflict and you can start to measure the real impact on the educational development and welfare of the child.

Worst yet, what happens to the gifted child, who does not have the parent with the resources of time, energy, and money? The current system of individual compliance fails this child and the many like him or her. The individual compliance system of due process with its legal complexities, practically speaking, is available only to the well-to-do. This is not the system that our legislators envisioned.

Senator Williams stated the situation well in her written comments:

Gifted students in Pennsylvania deserve access to educational opportunities that comply with state regulations. And if schools choose to deviate from those standards, there should be a system in place for parents to address shortcomings - real or perceived - without resorting to legal proceedings which end up costing not only the families and school districts, but ultimately the taxpayers.

Thank you and thank you to the Commissioners, the analysts and all of who serve at the IRRC in the review of the regulatory development process.

Sincerely,

James R. Clark, Esq.