

Comments of

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Before the

New Jersey Department of Education

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Thank you for the opportunity to testify regarding the special education provisions of the proposed “School District Fiscal Accountability, Efficiency and Budgeting Procedures” regulations.

As you may know, the Education Law Center (ELC), established in 1973, is a not-for-profit law firm which advocates on behalf of low-income students who are denied access to an appropriate education in New Jersey. ELC specializes in education advocacy for children with disabilities. Together with the New Jersey Coalition for Special Education Funding Reform – of which ELC is a member – ELC has been active in advocating for a special education funding mechanism that is adequate, efficient, equitable, predictable, flexible, transparent, placement-neutral and accountable.

Thanks in large part to active parent advocacy efforts at hearings before the State Legislature, and through a statewide letter-writing campaign, the proposed rules are an improvement over the rules now in place.

The Education Law Center and other advocates have previously asked that Section 2.3(f)(3) be limited to allowing the “establishment or expansion” of the listed service providers to provide in-district services and supports, and not allow the “establishment or expansion” of self-contained programs. The proposed rules limit the “establishment or expansion” to “administrative services.” We support this change, with the understanding that the term “administrative services” refers to the services described in Sections 2.3(b)(4) and (5). To avoid any misunderstanding, we request that the regulations specifically reference Sections 2.3(b)(4) and (5) when discussing “administrative services.”

Section 2.7(a)(3), which describes the role of the Executive County Superintendent (“ECS”) in coordinating special education services, now limits referrals to services and programs

in local school districts. This will help advance the Department's efforts to build local capacity, and will help ensure that special education services are delivered, to the maximum extent possible, in settings with typical students. We support this change.

We are disappointed to note, however, that the Department did not take into account the disability advocacy community's most critical concerns about the role of ECS in the Individualized Education Program ("IEP") process. We remain solidly opposed to Sections (a)(3)(i)-(iv) that require the IEP team to notify the ECS each time they are considering an out-of-district placement, and involve the ECS in individual IEP determinations. These sections expand the role of the ECS well beyond the purpose and scope of the enabling legislation, and are in conflict with the state and federal special education laws. Moreover, this type of direct oversight on a student-by-student basis will have a chilling effect on IEP decision-making.

Usurpation of the IEP Team Role

The purpose of the accountability regulations, as described in Subchapter 1, is to assure fiscal accountability of local school districts. The language in Section 2.7(a)(3), however, expands that purpose to include detailed oversight of special education decision-making for individual students, a role that is reserved under federal and state special education law for the school district's IEP Team of educational professionals. Section 2.7(a)(3) inappropriately inserts an outside, administrative body which knows nothing about the child except the child's age and the class type under consideration, in what is supposed to be a decision-making process undertaken by those who know the child. The regulatory provision undermines the important roles of professionally credentialed members of the IEP Team, including psychologists, social workers and teachers, as well as undermining the roles of the parents and the students. The ECS has a clear purpose in steering districts to make efficient and cost-effective decisions, but this

should not include a role in the special education decision-making process around individual students. IEP Team decision-making regarding appropriate programs for individuals must be guided by the mandate of the Individuals with Disabilities Education Act (“IDEA”) to provide a “free and appropriate public education” (FAPE) in the “least restrictive environment” (LRE).

Interjection of the ECS into the individual IEP Team decision-making process may lead districts inappropriately to conclude that, if an IEP Team makes a decision that is not consistent with the options identified by the ECS, then the ECS will deem the district to be “inefficient” and the district will increase its risk for loss or reduction of state funds. In addition, this provision is unnecessary as the IEP process already requires the IEP Team to carefully weigh specific factors (including cost, where appropriate) when considering appropriate services and supports, and then document the decision-making process, not only for the services and supports selected, but also for other services and supports that were considered and rejected.

Violations of Special Education Timelines

Section 2.7(a)(3) will also result in myriad violations of special education timeframes, which are already all-too-often violated. Factoring in the additional time required for a consultation with the ECS will often mean that the IEP Team will be unable to timely provide services to students.

Overwhelming ECS Caseload

Based on 2007 Department, over 23,000 students with disabilities in New Jersey were placed in out-of-district programs and hence will be subject to ECS review. Such large numbers are nothing short of unmanageable for a handful of county superintendents. Moreover, the review of documents for so many students will surely result in extensive violations of the IDEA

timeframes. It will also require a level of staffing and expertise in each ECS office which is sure to defeat the intended goal of cost-effectiveness.

Increased Legal Costs

Districts which are more likely to make inappropriate placement decisions as a result of recommendations from an ECS' cursory review of minimal student data, and districts which are more likely to encounter special education timeframe violations, are also more likely to face more lawsuits, making the role of the ECS anything but cost-effective.

Absence of Cost Data

The Department does not know the true costs of special education, and without such information, how can it determine that a certain cost is too great or too small?

Although we oppose the proposed role of the ECS in the IEP process, we do appreciate the proposed elimination of language that would allow the ECS to refer IEP Teams to "public regional programs" if no programs in local districts could be identified. Referrals should not be limited to public regional programs, nor should they be limited to "programs." Rather, they should include a range of supports and services -- from any provider, including local districts, approved clinics, approved private schools and public regional schools -- to foster in-district, in-class support for teachers and students.

In lieu of the proposed role for the ECS in the IEP process, ELC proposes the following cost-saving measures:

1. **The Department should arrange for the independent collection of special education cost data.** The independent collection of special education cost data is a prerequisite to implementing any policy to limit special education costs. Without knowing what special education services cost, how can cost saving special education policies be implemented.

2. **The Department should coordinate and regionalize pupil transportation.**

Transportation is one of the most expensive components of special education, and limiting the duplication of transportation services across districts will result in great special education cost savings.

3. **The Department should increase opportunities for districts to share equipment and assistive technology.**

Centers already exist that loan special education-related equipment. Information about such centers should be disseminated, and districts should be supported in developing their own “exchange programs” for costly special education equipment and technology.

4. **The Department should facilitate effective general education pre-referral intervention.**

If children are provided with early educational interventions, the need for extensive special education services is often obviated. Inappropriate special education classifications will decrease, as will special education costs.

5. **The Department should develop a database to track available services.**

A database of special education services will cut costs by reducing the number of inappropriate placements for children with disabilities. The database must include all aspects of the services, including class size, student/teacher ratio, length of school year, related services, nursing services, assistive technology, access to 1:1 instruction, adaptive equipment, access to non-disabled peers, tuition rates (reflecting a per diem rate), etc., and must include information about all schools, including charter schools, county vocational schools, and schools in neighboring states, as such programs may constitute LRE for a particular student and be closer to the student’s home than other in-county programs.

6. The Department should approve requests for suitable in-district, non-segregated school facility construction. This too is a cost-saving measure which will result in a reduction of inappropriate placement of students with disabilities in out-of-district placements who are placed out-of-district simply because there are no suitable facilities in-district.

ELC is grateful for the opportunity to have appeared before you, and we thank you for considering our comments. We are happy further to discuss any aspects of the proposed accountability regulations with you.

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