

New Jersey Special Education Practitioners

60 Park Place, Suite 300

Newark, NJ 07102

July 3, 2013

Barbara Gantwerk
Assistant Commissioner
New Jersey Department of Education
100 Riverview Plaza
Trenton, New Jersey 08625

Re: N.J.A.C. 6A:16 -- Programs to Support Student Development

Dear Assistant Commissioner Gantwerk:

As you know, New Jersey Special Education Practitioners is an association of attorneys and other advocates who practice in the area of special education in New Jersey. NJSEP focuses on matters related to the representation of parents and children under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

NJSEP's specific concerns regarding the proposed Student Development regulations are noted below.

N.J.A.C. 6A:16-2.3(a)3(iii) Health Services Personnel

NJSEP is confused by the removal of this regulation and what it means for students. Physicians are necessary to consult on student matters and may at times be needed to consult with the district board of education and staff administrators on specific student matters. To this extent health professionals need to be able to meet with and consult with appropriate education officials.

N.J.A.C. 6A:16-4.2(a) Review and Availability of Policies and Procedures for the Intervention of Student Alcohol or Other Drug Abuse

The Department recommends amending the regulations to remove a required annual review of the critical policies and procedures addressing student alcohol and drug abuse in favor of a vague "periodic review." NJSEP is concerned that this removal will lead to few if any reviews of such policies and procedures. In addition, the Department recommends removing a required consult

with parent, student, and community when reviewing the policies, electing a permissive consult. Without engaging with the school community and appropriate community agencies, school districts will be ill-equipped to address the needs of the student body. The Department and the Board should encourage consultations with the community, not discourage them.

N.J.A.C. 6A:16-5.2(b) School Violence Awareness Week

The Department recommends eliminating a requirement for private schools for students with disabilities to observe School Violence Awareness Week. The recommendation and the Department's rationale show a lack of understanding of students with disabilities. While schools may wish to have some flexibility in determining how to observe school violence awareness week, doing away with the requirement completely is extreme and discriminatory.

N.J.A.C. 6A:16-7.1(a), (b) and (c) Code of Student Conduct

The Department recommends eliminating the requirement for school districts to seek community involvement in developing their student codes of conduct as the Department believes the requirement is overly prescriptive. However, the regulation does not seek to determine how community involvement is obtained, only that it is obtained. Best practices show that community involvement in developing the code of conduct leads to better adherence to the code by students and better results for students. The recommendations are counter to the Department's mission.

In addition, the Department recommends removing the student conduct reporting requirement to the Department. Unless the Department can show where this information is already collected and made accessible to the public, NJSEP is opposed to the removal of this critical reporting requirement.

Finally, the Department recommends eliminating the requirement that the "description of comprehensive behavioral supports" include a) positive reinforcement for good conduct and academic success, b) supportive interventions and referral services, c) remediation of problem behavior, and d) behavior interventions and support pursuant to N.J.A.C. 6A:14. The Department has failed to provide a reasoned analysis that supports the weakening of the existing requirement, nor has the Department cited any change in law, policy, or research that justifies granting discretion to each school district about whether to use the four supports that are currently mandated.

N.J.A.C. 6A:16-7.3(a)(10)(i)(1) Long Term Suspensions

The Department recommendation to remove the requirement for a transcript or detailed report of a board disciplinary hearing likely violates the due process provisions of the state and federal constitutions. Without a transcript, or at the very least a *detailed* report, families face an insurmountable obstacle when filing a petition of appeal. In addition, in the instance where a board delegates the hearing function to a committee, the board will be unable to render a decision based upon the merits of the case without a transcript. At the very least, in the instance where a board chooses to delegate the hearing function to a committee, a transcript should be

mandated to be provided to the board members who did not participate in the hearing, prior to their rendering a decision in the case. The allowance of a detailed report in lieu of a transcript already provides the district with flexibility and the ability to save money. Under no circumstances should the Department allow districts to provide something shy of a *detailed* report.

N.J.A.C. 6A:16-7.8 Attendance

The Department seeks to minimize a school district's role in addressing student attendance by removing the mandate that determinations of whether an absence is excused take into account such factors as family illness, death in the family and religious observances. As the current version of the regulation notes, at least the mandates related to religious observances (Section a(3)(iv)) and those related to disability (Section a(3)(v)) are mandated by statutes and cannot simply be ignored. To remove references to these mandates suggests that these mandates are no longer in effect, which of course cannot be true if they are mandated by statute.

Moreover, NJSEP has seen cases where school districts do not seek to determine whether an absence is due to a disability but rather file truancy charges against a family. Instead of reducing a school district's role in addressing absenteeism, the State should be looking to increase the school district's role in addressing this very important issue that impacts student learning and achievement.

N.J.A.C. 6A:16-9 Alternative Education

The Department seeks to eliminate all regulations specifically addressing alternative education programs. The recommendation is most worrisome, considering that it fails to recognize that students placed in alternative programs have significant needs -- different from students attending general education programs -- which must be addressed. Removing the additional oversight and accountability provided by these regulations, particularly the Individualized Program Plan ("IPP"), is shortsighted at best.

N.J.A.C. 6A:16-10 Home or Out-of-School Instruction Due to Temporary or Chronic Health Conditions

NJSEP has many concerns regarding the recommended changes to this subchapter. First, extending the amount of time before a student with health conditions qualifies for home or other out-of-school services is most disturbing. Students with health conditions should receive services as least as quickly as students who are suspended or expelled.

Second, NJSEP objects to the inclusion of "online services" as a means of home instruction, without any guidelines. While there may be times when an on-line hook-up to the classroom may be appropriate, the regulations must convey that on-line courses are not to be used on a regular basis to substitute for in-person instruction and may only be used to supplement such instruction.

Third, the Department seeks to replace specific language regarding the number of days that, and the timeframe during which, services must be available, to vague language that provides for no accountability. It also entirely eliminates the mandate regarding one-on-one instruction, characterizing the requirement as an "arbitrary, universal rule set by the State." 45 N.J.R. 987, 998 (May 6, 2013). Setting aside the fact that the State has utilized this "arbitrary" rule for many years, the Department is proposing absolutely no limits on home instruction group sizes for students with health conditions, thereby affording districts an opportunity to cut corners at the expense of their students' education.

Fifth, the Department reduces the rights of students with health conditions by preventing access to highly qualified teachers who are certified for the subject and grade level, and limiting access to teachers who are merely "certified." Students should have the right to have a science teacher teach their chemistry course, and not just a certified teacher, when receiving instruction outside a classroom setting. The Department is again recommending that students have different rights and access to an education based upon their educational placement. The Department should not permit this type of blatant discrimination.

New Jersey Special Education Practitioners also supports the comments submitted by the Education Law Center regarding the proposed changes to N.J.A.C. 6A:16 (attached).

Thank you for your consideration.

Sincerely yours,

/s/

Denise Lanchantin Dwyer
on behalf of New Jersey
Special Education Practitioners

Encl.