

Comments of

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Presented by

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My name is Ruth Lowenkron and I am a Senior Attorney with the Education Law Center. 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. One of ELC's priorities and areas of specialization is advocacy for students with disabilities.

Thank you for the opportunity to testify before the New Jersey State Board of Education. I will limit my comments on behalf of ELC, and on behalf of the coalitions of which ELC is a member -- including the New Jersey Special Education Practitioners -- to issues affecting children with disabilities in New Jersey, highlighting our concerns with the proposed special education regulations -- second discussion level of the New Jersey Department of Education (NJDOE). Other staff from ELC will address other critical aspects of NJDOE's proposals.

As I underscored in my January testimony, first and foremost, ELC urges the State Board to slow down the race to overhaul education services in New Jersey. There is no one who would stand in the way of improving education for children, but the pace and breadth of the recent enactments and current proposals -- no matter how well thought-out -- can only lead to chaos and regression.

NJDOE seeks to eliminate or amend countless regulations as it deems them "overly prescriptive" to school districts and not strictly required by the express terms of any federal mandate. This is an increasingly misunderstood issue and the purpose of this testimony is to dispel the myth that New Jersey's

special education code is replete with rules that exceed federal requirements and impose additional burdens on local boards of education. The rules that NJDOE proposes changing actually impose little to no additional cost on local school districts, and in many instances, reduce costs. Moreover, these rules provide greater clarity on legal compliance for school districts and parents, operate to increase student learning, ensure quality and timeliness of service, and protect the rights of parents to meaningfully participate in educational decisions regarding their children with disabilities.

Special education law in New Jersey is derived from an overlapping array of federal and state statutes and regulations. It is the responsibility of NJDOE to interpret and harmonize these legal requirements, and then ultimately enact a cohesive body of regulations that establishes a state-wide standard of quality for special education programs and clear guidelines for legal compliance for all schools in New Jersey.

Unfortunately, in an effort to reduce “red tape” and cut costs, many special education regulations have been targeted for elimination or amendment. Provisions of the special education code have been mis-characterized as “unfunded mandates” that exceed federal special education law. On the surface, NJDOE’s proposal may sound like a common-sense initiative to increase efficiency and reduce administrative requirements for cash-strapped local boards of education. But upon closer examination, the regulations that have been cited as imposing burdens on schools in excess of state or federal mandates actually provide significant benefits for students, parents, teachers, administrators and

schools generally by providing 1) greater clarity, 2) increased cost-savings for schools, and 3) fundamental fairness and accountability.

ELC's specific concerns regarding NJDOE's recommendations are noted below.

2.3(k)(2)(xi) -- Clarification is required regarding the initial reference to "school district." It would appear that the intention is to reference the receiving school district and the word "receiving" should be added.

2.5(c) -- Again, clarification is required here. As parents, school districts and even NJDOE use the words "evaluation" and "assessment" interchangeably, as there is no definition for either term and as the section heading references the term "evaluation," this provision could be read to mean that a parent is only entitled to one assessment per initial evaluation or reevaluation which would, of course violate the Individuals with Disabilities Education Act (IDEA). A parent is clearly entitled to request multiple assessments and may, for example, request both a learning Independent Educational Evaluation (IEE) and a psychological IEE.

In addition, while ELC appreciates the removal of subsection 1 (permitting the school district the opportunity to conduct an evaluation in an area not yet assessed) as having been in violation of IDEA, it is not enough to simply remove the provision. Especially given the fact that this illegal provision was formerly part of the code, NJDOE must affirmatively note that districts do not in fact have the "first opportunity" to conduct an evaluation in an area not yet assessed by the district.

2.5(c)(8) -- ELC appreciates the addition of this subsection to clarify that school districts must ensure that parents are provided a copy of the IEE assessment.

2.7(h)(7) -- The inequity of the treatment of parents and school districts could not be more obvious. A school district should not be able to simply move to dismiss a case where a parent does not attend a resolution meeting. As other sections of the code clarify, and as should be re-stated here, the district is obligated to make extensive efforts to ensure that a meeting is scheduled at a time that is convenient for the parents, and NJDOE must ensure that the parents in fact can come to the scheduled meeting. Moreover, it is wholly inappropriate to allow a school district to file a motion to dismiss the case if the parent does not attend a scheduled resolution meeting, while not providing that same opportunity to parents where the district fails to attend such a meeting.

In addition, if a school district fails to schedule and conduct a resolution meeting, the parent – especially the *pro se* parent – should not be required to “fill[e] a motion” with NJDOE to request a meeting date, but rather should be able to simply contact NJDOE for this purpose.

3.2(a) – NJDOE inappropriately proposes to allow staff other than child study team (CST) members to serve as case managers of the Individualized Education Program (IEP) teams. CST members are in fact hired for this purpose and have the most knowledge about serving students with disabilities. Teachers, on the other hand, likely lack the requisite knowledge to so serve and do not have time to serve in this role. Moreover, ELC is concerned that allowing some undefined “other licensed staff member” with undefined “appropriate knowledge ...” to serve

as a case manager may result in transferring this critical role to wholly unqualified individuals. This change is one of but many that appears to be, at best, penny wise but pound foolish as it will result in inefficient administration of district special education programs.

3.3(e) -- This proposal to decrease to one the number of child study team members required at an identification meeting will result in losing the many perspectives necessary for a quality identification meeting. It is also highly likely to interfere with the parents' ability to provide the mandatory lawful consent. Moreover, this proposal will lead to an increase in disputes between families and schools which will result in delays in appropriately educating children and great costs to both districts and families. This proposal should not be accepted. At a minimum, the attending CST members must be mandated to seek input from non-attending CST members.

In addition, repetition of the parents' right to participate in meetings by telephone may give the false impression that parents must participate by telephone, and therefore, this provision should be omitted.

3.3(e)(3) -- As numerous pre-schoolers face speech and language problems, removal of the speech therapist from the group of CST members required for preschoolers referred for an initial evaluation will result in countless children not receiving the services they require. This too may appear to save money, but depriving children of services, especially in the early years when ameliorating disabilities can be most effective, will cost districts, taxpayers and society at large, dearly. It also violates IDEA.

3.3(e)(4) -- Here too, the removal of the speech therapist -- as well as the removal of the general education teacher -- from required CST membership when a suspected language disorder is being identified, will result in countless children going unserved, at a great cost to all.

3.4(h)(5) -- The removal of the required written certification by each CST member of all evaluation reports in eligibility determinations, except in cases of learning disabilities, is likely to result in large-scale inefficiencies, and at no time or cost saving to the districts. Notably, NJDOE errs in saying that this proposal will align this provision with the federal regulations. Section 20 C.F.R. § 300.311(b), the analogue to Section 3.4(h)(5), is not limited to learning disabilities.

3.5(a), 3.6(c), 3.8(f) – These sections will reduce the time frame in which districts must provide parents copies of written reports from 10 days to 5 days. This is likely to do nothing more than lead to postponed meetings and additional meetings which will result in additional administrative costs and more work for districts.

3.7(d)(2) -- The proposed removal of the time frame within which districts must provide amended IEPs to parents limits parental due process rights and may also result in costly adversarial proceedings when parents have limited time to review and understand proposed services. While not necessary when an IEP is amended by parents without a meeting pursuant to the added provision in 3.7(d)(1), it remains necessary when the IEP is amended at an IEP meeting.

3.7(d)(3) -- Similarly the removal of the provision that any IEP amendments be incorporated in the IEP, while not necessary when an IEP is amended by parents

without a meeting pursuant to the added provision in 3.7(d)(1), remains necessary when the IEP is amended at an IEP meeting.

3.7(d)(4) -- The proposed removal of the provision which clarifies that IEP amendment does not affect the requirement that the IEP be regularly reviewed is likely to lead to confusion as it is a correct statement of the law and its removal suggests it is no longer the law. Any confusion in the law is of course costly in the long run, and here, removal of the provision does not benefit districts in the slightest.

3.7(e)(2) -- ELC questions what advantage is attained in eliminating the adjective "detailed" in describing the required statement of goals. No rationale is provided, and again, lack of clarity is sure to result in greater costs to all.

3.7(e)(13) -- The removal of the liaison for post-secondary resources may appear to be a cost-saving measure, but it will lose money for the state in the long run if persons with disabilities do not have jobs and are on the dole. Congress, in the preamble to the IDEA recognized the importance of post-secondary services, as did the New Jersey Legislature when it enacted the career-readiness provisions of the Core Curriculum Content Standards. Moreover, pursuant to IDEA, states need to report on post-secondary outcomes to the federal Department of Education. This proposal is therefore unnecessary and at great expense to all.

3.8(e) -- This proposal to increase the time frames to complete a re-evaluation from 60 days to 90 days – more than one quarter of the school year -- is based on the faulty rationale of the Education Transformation Task Force that

"evaluation [(as opposed to IEP implementation)] timelines ... generally afford districts 90 days." Children are hugely dis-served if they must endure lengthy waits to receive an appropriate education.

In addition, there is no need to repeat that, where parents repeatedly fail to produce their children for evaluations, the district shall not be held to the time lines, as this is threatening to parents.

4.1(g)(1), (2) -- These provisions again greatly increase time frames -- here, increasing the time frame for evaluations for student transfers from 30 days to 90 days. Such delays are of great dis-service to students, while of limited help to districts.

4.9(a)(5) -- Allowing NJDOE to grant age range and group size exceptions for a period longer than a school year will allow students to be served for great periods of time in a manner that all have agreed is sub-optimal.

4.9(d), (e) -- The removal of the requirement that parents be informed when a waiver to class size or age range has been granted for their children's class is in direct violation of IDEA which mandates that parents provide knowing consent regarding the services provided to their children, and will also be in violation of those student IEPs which call for limited class sizes or age ranges.

5.1(c) -- If districts are permitted to contract with approved private schools to provide services to their students with disabilities, safeguards must be added to guard against conflicts of interest by private schools.

7.6(c) -- The removal of a critical student safeguard that private school personnel meet the federal definition of "highly qualified" in subject matter

competency, will result in equal protection violations for students with disabilities placed in private schools.

7.6(h) -- Eliminating the obligation of NJDOE to approve the Extended School Year (ESY) programs of private schools again results in the unequal treatment of students with disabilities in private schools.

7.6(j) -- A change in private program ownership can change the very nature of the program. Thus, removing the obligation to notify NJDOE when program providers change ownership may result in IEP violations. Moreover, this proposal appears to be of limited time- or money-saving value. NJDOE must require notification.

9.1(b) -- Removal of the district self-assessment from monitoring procedures will come at great expense to the monitoring process, as it has long been deemed by NJDOE and districts as an invaluable tool to assist in state oversight. Even if removal of this tool were to be cost-saving for, and otherwise advantageous to, school districts, it would result in far greater costs to NJDOE and greatly disadvantage NJDOE which has come to rely on districts taking the first step of informing NJDOE of district IDEA compliance.

9.1(d) - (h) -- Removal of the provisions for an "improvement plan" in exchange for some undefined "determ[ination]" of being "in need of assistance, intervention or substantial intervention" will again remove a tool that has been deemed an appropriate tool by both NJDOE and school districts.

For all of the foregoing reasons, we strongly urge the State Board not to eliminate or dilute any of the special education provisions discussed above.

Thank you for your time and attention to this matter.