

February 27, 2020

Peggy MacDonald, Ed. D, Assistant Commissioner  
Division of Student Services  
New Jersey Department of Education  
100 Riverview Plaza, P.O. Box 500  
Trenton, NJ 08625

**Re: Disability Rights New Jersey's Comments to Enhancements  
to the Special Education Dispute Resolution System**

Dear Dr. MacDonald:

Disability Rights New Jersey (DRNJ) writes to comment on the New Jersey Department of Education's (NJDOE) Proposed Enhancements to the Special Education Resolution System (Proposed Guidelines). Essentially, we agree with the New Jersey Special Education Practitioners' (NJSEP) comments already filed in response to the Proposed Guidelines and wish to make some additional comments.

DRNJ is the federally-funded, non-profit organization designated as the protection and advocacy system for individuals with disabilities in the State of New Jersey. DRNJ provides legal representation, advocacy, technical assistance, education and training as well as information and referral to individuals with disabilities, their families, and the professionals who serve them. DRNJ's priorities are set by its Board of Directors which is comprised primarily of individuals with disabilities and family members of individuals with disabilities. One of DRNJ's priorities is ensuring that students with disabilities receive a free, appropriate public education in the least restrictive environment under the Individuals with Disabilities Education Act, 20 U.S.C.A. §§ 1400-1482, and its implementing New Jersey regulations, N.J.A.C. 6A:14-1.1 to -10.2(b).

NJDOE issued the Proposed Guidelines dated January 17, 2020, and NJSEP, of which DRNJ is a member, filed its comments in response to the Proposed Guidelines on or about February 18, 2020. As stated previously, DRNJ fully supports NJSEP's comments and wishes to supplement such comments with the following:

*Advocating and advancing the human, civil and legal rights of persons with disabilities*

- a.) Page five of NJSEP's comments state, in relevant part, that "[P]roposed Guidelines should include examples of 'extraordinary circumstances' such as medical procedures that cannot be delayed, death of family member or illness." DRNJ wishes to articulate that "extraordinary circumstances" should also include the unavailability of services mandated under the Americans with Disabilities Act, 42 U.S.C.A. §§ 12101-12213 (1990) and New Jersey Law Against Discrimination, 10:5-1 to -49, such as Communication Access Realtime Translation (CART) and American Sign Language (ASL) interpreters for representatives and clients on a particular date. Given the high demand and low supply of qualified ASL interpreters for court proceedings, an ASL interpreter is typically unavailable on a few days' notice.
- b.) DRNJ strongly supports NJSEP's comment on page 10 that Proposed Guidelines should state that "no witness shall be allowed to testify as an expert unless the witness submits an expert report setting out each expert opinion and the facts upon which the expert witness is relying for each opinion." Further, DRNJ substantiates, based on its own experiences in due process hearings, NJSEP's comment on the same page that school districts' witnesses have been allowed to testify as experts and render expert opinions without having prepared a written expert report.

DRNJ believes that imposing the requirement on parents' experts - but not on the districts' experts - to produce written expert reports gives the districts an unfair advantage in that districts can more easily anticipate and thus be more prepared to counter the parents' experts' testimony. Whereas, parents and their representatives would essentially have to resort to the guessing game in anticipation of the districts' experts' testimony without any expert report proffered in advance. This is especially true when there is no formal discovery in special education matters. N.J.A.C. 1:6A:10-1 (stating that "[d]iscovery may not include requests for formal interrogatories, formal admissions or depositions).

- c.) DRNJ supports NJSEP's comment at the bottom of page 10 that all witnesses who testify as experts should be required to produce written expert reports and curriculum vitae (CV) at least five business days in advance of the due process hearing. DRNJ's position is that when a party objects to the admission of a witness as an expert due to the untimely production of CV, the administrative law judge must prevent the designation of that witness as an expert. DRNJ once represented a student at a due process hearing where it objected to the admittance of the district's child study team members as experts on account of the district's failure to produce their CVs within five business days. Even though the judge sustained DRNJ's objection, the judge

nevertheless allowed the child study team members to testify as to their credentials and then unilaterally accepted them as experts.

- d.) DRNJ agrees with NJSEP's general comment on pages 13 and 14 that it is unrealistic to expect that a due process hearing can be concluded within two full hearing dates. In addition to the reasons already proffered by NJSEP, it is inevitable that hearings take longer to complete when ASL interpreting and CART services are utilized. In fact, DRNJ has provided representation in proceedings that necessitated both an ASL interpreter and another foreign language (e.g., Spanish and French) interpreter. Obviously, the dual interpretation process was even more time-consuming. Hence, it is simply not practical to impose the two-day limit for hearings.

We greatly appreciate the opportunity to respond to the Proposed Guidelines with our comments above. Should you have any questions or concerns regarding our comments, please do not hesitate to contact Mary A. Ciccone either at the telephone numbers above or by way of e-mail at [mciccone@drnj.org](mailto:mciccone@drnj.org).

Sincerely,



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Robert A. Robinson  
Manager of Special Education



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Mary A. Ciccone  
Director of Public Policy