

Changing the Rules of Special Education In Virginia

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TAKE ACTION

The proposed changes are being considered by Gov. Tim Kaine. To comment on them, go to <http://www.governor.virginia.gov/AboutTheGovernor/contactGovernor.cfm>

Proposal would erode family-school partnership, create uneven playing field

BY EMILY SUSKI
SPECIAL TO THE HERALD COURIER

Virginia is considering changes to special education rules that would erode parental rights with respect to their children's special education plans, or individualized education plans.

As an attorney for students with disabilities and their parents, I have been to many IEP meetings. These meetings are intended to be cooperative, and the goal is for those at the meeting to come to an agreement about how to address students' needs in school. There are sometimes disagreements at IEP meetings because parents and the schools have different points of view.

CURRENTLY, IF such disagreements arise, the Virginia special education regulations require parental consent before a student's IEP is changed. The last agreed-upon IEP stays in place until parents and school staff can reach a new agreement. This creates an incentive for parents and schools to keep working together. In other words, the parental consent requirements foster family-school partnerships and non-litigious resolutions of disagreements.

Under the proposed changes, however, these parental rights would change. Parents would no longer have the right to consent before a partial or complete termination of their children's special education services. Additionally, at least in the case of a partial termination of services, no evaluation would be required before the services are terminated.

So, for example, if at an IEP meeting there is a disagreement between parents and schools about removing a child's speech therapy services from an IEP, the services could be removed without parental consent and without a prior evaluation. As the draft regulations are currently written, the services would not continue unless parents resort to a due process hearing, which is an expensive, complicated, adversarial way to litigate a dispute.

THESE PROPOSED changes would erode the family-school partnerships the current regulations encourage. They would also leave parents in a position in which they either have to accept a partial or complete termination of services for their children or request a due process hearing to ensure the matter gets resolved. Even though parents can request mediation, mediation is voluntary. This change need not take place – especially because schools currently can request due process hearings if they disagree with a parent’s decision not to consent to a termination of services. The proposed changes to parental consent rights would effectively shift the burden for requesting due process hearings from schools to parents.

It is my understanding that the Virginia Department of Education has taken the position that the draft regulations require evaluations before even a partial termination of services and that services will remain in place pending any method of dispute resolution. However, the draft regulations, as written, do not include these requirements.

Even if VDOE changed the draft regulations to include those requirements, it would not be enough. Parents would still no longer have the right to consent before any partial or complete termination of special education services, and thus the regulations would still erode parental consent rights. Such an erosion of long-standing parental rights is unacceptable.

Emily Suski is a staff attorney with JustChildren, a program of the Legal Aid Justice Center in Charlottesville. She may be reached at emilys@justice4all.org

Parents still will have a voice in their child’s individualized education plan

BY DOUGLAS H. COX
SPECIAL TO THE HERALD COURIER

The Virginia Board of Education is in the process of revising the state’s special education regulations to comply with changes outlined in the federal Individuals with Disabilities Education Improvement Act of 2004.

From the beginning, this process has been conducted "above the radar" and in full compliance with Virginia’s Administrative Process Act and Gov. Tim Kaine’s October 2006 executive order on the development and review of proposed regulations.

FOR EXAMPLE, the board’s vote in October 2006 to approve the first step in the process – known as a "Notice of Regulatory Action" – resulted in 1,747 comments from interested citizens to the Virginia Department of Education. The public presentation of draft regulations at the board’s September 2007 meeting and their posting on the department’s Web site resulted in more than 1,200 additional comments.

The presentation on the VDOE Web site includes the full text of the draft regulations and detailed information about the regulatory process and opportunities for public participation, including instructions on how to forward comments by e-mail, fax and mail. Additional information will be posted once the formal public comment period begins and the Board of Education schedules public hearings.

The impetus behind the revision process was explained during 13 parent-training sessions held around the state – five of which were conducted in cooperation with the Parent Educational Advocacy Training Center, Virginia’s federally funded parent information center. Informational sessions also were conducted for other stakeholders.

I encourage parents and other interested citizens to read the proposed regulations before jumping to conclusions based on what they may have heard or read in the news media. For example, a revision of a child’s Individualized Education Program, or IEP, would continue to require parental approval under the proposed regulations.

The only parental consent requirement that would be eliminated by the proposed regulations is for termination of services when a properly conducted evaluation determines that a child no longer qualifies for special education services. But the parent would still be part of the IEP team that reviewed the findings of the evaluation and decided whether continued services were appropriate.

If a parent disagrees with a finding that special education services are no longer needed, he or she could still request an independent evaluation at public expense. An array of dispute-resolution options also would remain available to parents under the revised regulations, including mediation and due process. And children would continue to receive services until disputes are resolved.

Parents and all Virginians concerned about special education are encouraged to participate in the regulatory process, either by submitting comments or appearing personally at a public hearing. Your voices matter and your views will be considered by the Board of Education.

Douglas H. Cox is assistant superintendent for special education and student services for the Virginia Department of Education in Richmond.

Reader Reaction:
Your Comments

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Posted March 03, 2008 @ 05:24 PM by Anonymous
As parent of two special needs children I find Mr.Cox comments to be insincere and untrue. Proposed 8 VAC 20-81-90 B.3., states: "Prior to any partial or complete termination of special education and related services, the local educational agency shall comply with the prior written notice requirements, but parental consent is not required."

So Mr.Cox where is the statement about conducting evaluation to determine if a child no longer needs services? VDOE should be ashamed of themselves!

Posted March 02, 2008 @ 07:04 PM by bharrison

(Re: Suski)I have never read a more compelling argument against allowing bureaucrats and politicians to make decisions about ANY child's INDIVIDUAL educational plan.

(Re: Cox) I have never read a weaker defense for what I think is an indefensible position. The "only" one eliminated is for "termination of services"...."ONLY?" What is more important than that? And he never said why!This Act defies even the imbecilic Federal NCLB. Look out when the stupid defy the moronic. (No, Ah'm a techur!)

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