



COMMONWEALTH OF VIRGINIA

HOUSE OF DELEGATES

RICHMOND

WILLIAM J. HOWELL
SPEAKER

STATE CAPITOL
POST OFFICE BOX 406
RICHMOND, VIRGINIA 23218

COMMITTEE ASSIGNMENTS:
RULES (CHAIRMAN)

June 29, 2008

The Honorable Thomas R. Morris
Secretary of Education
Patrick Henry Building
P.O. Box 1475
Richmond, VA 23218

Dear Secretary Morris:

It is with great concern that I contact you regarding the proposed revisions to the *Regulations Governing Special Education Services for Students with Disabilities in Virginia*. After extensive review, I believe the majority of the proposed changes provide little benefit yet have the potential to greatly diminish the rights and protections of many students served in Virginia schools.

A number of the proposed revisions remove the provision of parental consent and parental input, a hallmark of the Commonwealth's services that has set us apart as a leader in the field of special education. Family involvement is a crucial component in assuring that the most effective services are implemented for each child and that he or she has the optimal opportunity for success in the classroom. I request that the current provisions for parental consent and parental input remain intact throughout the regulations (*Parental Consent to the Termination of Services [8 VAC 20-81-90]*, *Parental Consent to Services for Transfer Students [8 VAC 20-81-120]*, *Functional Behavioral Assessments (FBAs) [8 VAC 20-81-10 p.27-28]*).

Regarding the proposed termination of services without parental consent, adequate means already exist to address students that have progressed beyond the need for services. Should there be disagreement between the Local Education Agency (LEA) and the parent(s) regarding whether or not services should be terminated, the LEA may pursue the matter through due process. Interestingly, according to the Director of Special Education Services for the school system in my locality, our school system has never taken a parent to due process for this issue.

The proposed revision to the *Due Process Hearing System [8 VAC 20-81-210 p.234-264]* is of great concern. Removing the supervision of this process from the Supreme Court of Virginia and shifting responsibility solely to the Department of Education (DOE), the entity the student/parent(s) are contesting, is clearly a conflict of interest. As the final means of appeal, the integrity of the legal process must be preserved. Without question, oversight of the due process hearing officer list should remain under the authority of the Supreme Court of Virginia and not be shifted to DOE.

A number of the proposed revisions remove accountability measures now in place to measure progress and report on *Individualized Education Program (IEP)* goals. I oppose these changes

and prefer that the existing regulations remain intact (*IEP Progress Reports* [8 VAC 20-81-110 p.154], *Accountability for IEP Goals* [8 VAC 20-81-110 p.140], *Short Term Objectives* [8 VAC 20-81-110 p.151]). Regular progress reports protect all involved – the student, teacher(s), administrators and parent(s) – and provide invaluable feedback throughout the academic year. Limiting progress reports limits accountability and diminishes the opportunity to rectify problems or address concerns. Furthermore, disabled students and their parents have the same right to progress reports as do non-disabled students and their parents.

A number of other proposed revisions cause me concern: extending the timeline for an eligibility decision rather than adhering to federal guidelines potentially causing a delay in services of up to four weeks (*Timelines* [8 VAC 20-81-60 p.97]); limiting the developmental delay category (*Developmental Delay* [8 VAC 20-81-80 p.121]); potentially making it far more difficult for students with autism to obtain services (*Definition of Autism* [8 VAC 20-81-10 p.12-13] and *Eligibility Criteria* [8 VAC 20-81-80 p. 119-120]); changing the existing regulation to limit an LEA's requirements to provide written notice to parents, further diminishing parental rights (*Prior Written Notice* [8 VAC 20-81-170 p.201-202]); and allowing an LEA to deny a parent's request for an IEP meeting (*Parent Requests for an IEP Meeting* [8 VAC 20-81-110 p.140]). Each of these revisions seem to diminish the student's and parent's rights and a number of them fall short of federal requirements under the Individuals with Disabilities Education Act (Revised 2004) (IDEA).

After informal discussions on this subject with leaders in the House of Delegates, I have referred this matter to the *Joint Commission on Administrative Rules*. Members of the Commission have already begun to review the proposed revisions to the regulations and those I have spoken with share my concerns. Preferably, we would like to address these issues during the promulgation process and avoid making corrections via legislation. However, we are prepared to utilize the latter course of action if necessary.

Thank you for your consideration.

Sincerely,



William J. Howell

WJH/kr

Cc: The Honorable Timothy M. Kaine

Special Education Regulations Revision Process
Office of Dispute Resolution and Administrative Services
Virginia Department of Education