

Board of Education Agenda Item

Item: _____ M. _____

Date: _____ July 17, 2008 _____

Topic: Report from State Special Education Advisory Committee Concerning Proposed Regulations Governing Special Education Programs for Children with Disabilities in Virginia

Presenter: Mr. H. Douglas Cox, Assistant Superintendent for Special Education and Student Services
Ms. Anne Fischer, Chair, State Special Education Advisory Committee

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Origin:

Topic presented for information only (no board action required)

_____ Board review required by
_____ State or federal law or regulation
_____ Board of Education regulation
_____ Other: _____

_____ Action requested at this meeting _____ Action requested at future meeting: _____ (date)

Previous Review/Action:

_____ No previous board review/action
_____ Previous review/action
date _____
action _____

Background Information:

The Individuals with Disabilities Education Act (IDEA) requires each state to establish and maintain an advisory panel for the purpose of “providing policy guidance with respect to special education and related services for children with disabilities in the State.” Among the required responsibilities of the state advisory panel specified in the federal regulations governing IDEA is that the panel must “comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities.” The State Special Education Advisory Committee (SSEAC), at its regularly-scheduled quarterly meeting held April 16 – 18, 2008, prepared this comment.

Summary of Major Elements

The report includes the SSEAC position on those issues that the committee considered to be of highest priority.

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board of Education accept the report of the State Special Education Advisory Committee.

Impact on Resources:

There is no impact on resources.

Timetable for Further Review/Action:

No further action on this report is anticipated.

Virginia State Special Education Advisory Committee
Report to the Board of Education Concerning Proposed Revisions to
Regulations Governing Special Education Programs for Children with Disabilities in
Virginia

On behalf of the full membership of the State Special Education Advisory Committee (SSEAC), the following comments are being submitted to the Virginia Board of Education regarding the draft revision of the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*. The advisory committee's duties include commenting publicly on any rules or regulations proposed by the Virginia Board of Education regarding the education of children with disabilities.

As a standing subcommittee of the SSEAC, the Policy and Regulations Subcommittee met a total of nine hours to draft the SSEAC public comment to the aforementioned document. The result of the subcommittee's work was presented to the full committee in attendance on April 17 - 18, 2008. Because full consensus was not obtained, the following comments reflect the committee vote as recorded and documented.

The subcommittee's efforts included historical information gathered from public comments, constituency reports, position statements from organizations, and the public comment of this committee during the NOIRA period of this regulatory process. The positions of all members were considered in the decision-making process. In addition, the Policy and Regulations Subcommittee determined that the public comment of the SSEAC should reflect only issues of most priority to that full diverse membership.

As noted in the NORIA comment provided on February 23, 2007, the Policy and Regulations Subcommittee would recommend the following from that document:

- a. Expand the Forward to include information that sets the stage for the people who will need to access the regulations: teachers, administrators, parents and students. Specifically, the SSEAC encourages you to include:**
 - **An overview of the regulations, written in easy-to-access language,**
 - **IDEA 2004 intent language, including the emphasis on “high expectations,” and “educating children in the regular classroom, so they can meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children and be prepared to lead productive and independent adult lives, to the maximum extent possible.” (Section 1400(c)(5)(A)) (from the “Findings” section, IDEA 2004)**
 - **Information about best practices**
The regs have the force of the law, best practices change over time, therefore policy and guideline documents should reflect those practices
 - **IDEA 2004 purposes language – especially the provision that special education services should be designed to meet students’ “unique needs and prepare them for further education, employment and**

independent living.” (Section 1400(d)(1)(A))
The fiscal and administrative impact would be minimal, because this language will simply provide clarification and background information.

The following statements were approved by the full SSEAC on April 17 and 18, 2008 by a vote of 14 to 1 with no abstentions.

1. 8 VAC 20-81-110

Short Term Objectives for the Adaptive Curriculum

The SSEAC supports the language of short term objectives or a description of benchmarks for all students participating in alternate assessments, but would further support language that mandates the IEP team to consider short term objectives for all students receiving special education and note that consideration in the IEP document.

2. 8 VAC 20-81-10

Developmental Delay

The SSEAC supports maintaining current regulatory language which would allow the local education agency the option of extension of that classification for ages 5-8, inclusive. The committee supports a general category that avoids inaccurate labeling at an age where developmental milestones are still emerging.

3. 8 VAC 20-81-60

Timelines for Evaluation and Eligibility/ Reevaluation

The SSEAC supports a timeline of 65 business days from *date of referral* for evaluation and the determination of eligibility. We recommend that the 'trigger date' be the receipt of referral and not prompted by date of parental consent.

4. 8 VAC 20-81-50

Elimination of Child Study Team

The SSEAC supports the elimination of the child study team with the following support to the regulations: The LEA must establish and follow the procedures developed in accordance with the regulatory language proposed in 8 VAC 20-81-50 D.1. Furthermore the SSEAC maintains that the suggested 65 business day timeline associated with the date of referral will provide a more efficient response time by the LEA.

5. 8 VAC 20-81-10

Functional Behavior Assessment

The SSEAC supports the proposed definition with the request for the following additional language". . . may be a review of existing data" in addition, ". . . or new testing data as may be required."

6. 8 VAC 20-81-10

Definitions of Emotional Disturbance, Mental Retardation, Child with a Disability

The SSEAC supports the following changes to the definitions: Emotional Disturbance to Emotional Disability, and Mental Retardation to Intellectual Disability. These terms should be cross-referenced throughout the document. We also request that the term “developmental delay” be inserted into the definition of “Child with a Disability.”

7. 8 VAC 20-81-10

Definition of Autism

The SSEAC recommends that the term "diagnosed" be changed to "identified" in the definition. While diagnosis is referenced in the eligibility criteria (8 VAC 20-81-80), the use of the word “identified” is used in federal regulation.

8. 8 VAC 20-81-110

Secondary Transition

The SSEAC supports the language in the proposed regulations regarding a 2-tiered system of transition beginning at age 14, similar to the 2002 regulations.

9. Parent's Resource Guide

The SSEAC recommends that the Department of Education develop a Parent's Resource Guide to coincide with the release of the regulations. In the past revision years, an understandable, workable, readable resource did not appear until long after the regulatory process closed. A parent's guide that is timely in its release would be beneficial to all parents.

10. 8 VAC 20-81-169

Discipline Procedures

The SSEAC supports the inclusion of language similar to that of 8 VAC 20-81-110 F.2 referencing the strategies and positive behavioral supports already in place be inserted into the General description (8 VAC 20-81-160 A). We recognize that "school personnel may consider any unique circumstances on a case-by-case basis. . ." must reflect all of the considerations of the IEP team on the record.

11. 8 VAC 20-81-210

Due Process

The SSEAC supports the transfer of the administration of the due process system from the Virginia Supreme Court to the Virginia Department of Education with an additional recommendation. In establishing the procedures of this administration outlined in 8 VAC 20-81-210 B.1, the SSEAC requests the requirement of a parent advisory role in the selection/ training process. This advisory role would follow the Department of Rehabilitative Services model. The SSEAC also recommends that neither party (parent or LEA) referenced in 8 VAC 20-81-210 D. 6, be allowed to raise any issues not previously indicated in the notice of the due process hearing.

The following comments required a separate vote from the full committee, due to lack of consensus within the policy and regulation subcommittee:

12. 8 VAC 20-81-230

Local Advisory Committee

The SSEAC supports retaining the current regulatory language regarding membership. The SSEAC does not support the representation of gender and ethnicity reflected in membership, but recognizes that local committees should show intent to be represented by a diverse population. The SSEAC does not support the deletion of current language regarding LAC personnel serving the committee as consultants. The vote was recorded as 13-yes, 1- no, 1-abstain.

13. 8 VAC 20-81-90 and 8 VAC 20-81-120

Parental Consent

The SSEAC supports retaining ALL parental consent requirements in the current regulations of 2002. A roll call vote was requested and can be viewed in the minutes of the April 2008 SSEAC meeting. The count as voted was yes -12, 2- no, 1- abstain.