



ADVOCATES FOR CHILDREN

Helping children succeed in school

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Dr. John King
Senior Deputy Commissioner for P-12 Education
New York State Education Department
89 Washington Avenue, 125 EB
Albany, NY 12234

Dear Deputy Commissioner King:

We are writing to express our concern over suggestions for mandate relief put forward in your memo to the Regents of February 1, 2011. For the past 40 years, Advocates for Children of New York (AFC) has been helping low-income parents of struggling students get the support they need in school. As such, we have a strong sense of which education-related mandates are most important to protecting the interests of the parents and students we serve. We realize that many of the ideas set forth in your memo will be clarified further, but given the tight timeline that the Governor has established for mandate relief, we did not want to wait to convey our most pressing concerns.

As an initial matter, we were pleased that your memo included a list of key actions that could be taken to improve performance of students with disabilities while ultimately reducing costs. These actions – such as controlling rising classification rates by instituting better instructional programs in general education, and building relationships of trust and strong communication with parents – are critical steps for reform. Unfortunately, some of the items you list as possible targets for mandate relief would move the State backwards on these long-range goals.

In particular, we are troubled by the following items:

- 1. Elimination of the requirement for school psychologists to participate in CSE and/or some subcommittee meetings. (## 27, 28)*

It is not yet clear exactly what will be proposed here, but the families we serve need to have someone present at meetings who can interpret the instructional implications of psycho-educational assessments and other evaluations. Indeed, the federal regulations implementing the Individuals with Disabilities Education Act (IDEA) make that requirement explicit, 34 C.F.R. § 300.321(a)(5), and the psychologists are the only ones at the meetings who are qualified to fill that function. Families and teachers also need someone at the meeting qualified to help make decisions about what additional tests or evaluations should be administered. In addition, for some of the parents we serve, the CSE or subcommittee meeting is the first time they hear that their child may

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have a disability. It is important that they have a psychologist there to answer questions they may have.

2. *Elimination of the requirement that an individual evaluation include specific assessments to be conducted as part of the initial evaluation: physical examination, individual psychological evaluation, social history, observation, other appropriate evaluations and functional behavior assessment (FBA) when behavior impedes learning. (#29)*

This item also requires clarification. If no particular assessment is required as part of an initial evaluation, state law will need to mandate a procedure for determining which assessments are needed. Given budget constraints, team members will feel pressure to minimize the number of assessments conducted and therefore risk missing important aspects of the child's learning needs. If each team has the unlimited discretion to determine which assessments are administered, and a psychologist is eliminated as a required member of the team pursuant to other recommendations, children could be classified as disabled and entitled to special education services based on nothing more than standardized test scores and classroom behavior.

3. *Elimination of the process for a school psychologist to determine the need to administer an individual psychological evaluation and requirement for a written report when such evaluation is determined not to be necessary. (#31)*

In this time of tight budgets and reduced staffing, schools will be more tempted than ever before to save money and time by opting out of psychological evaluations. At AFC, we have seen too many cases where students languished for years in classes that were not meeting their needs because despite the protection in New York law, schools never re-evaluated them to determine their academic progress and cognitive growth. Maintaining this requirement in the law does not ensure that all children who need psychological evaluations will get them, but it significantly reduces the likelihood that such evaluations will be wrongly denied or forgotten. This recommendation, combined with the previous ones eliminating psychologists as required members of a CSE team and eliminating the requirement for psychological testing, could seriously reduce the efficacy of special education services and greatly increase both over- and under-identification of students with disabilities.

4. *Elimination of the requirement that when a child has been placed in a residential program or is at risk of a residential placement, parents must be notified of when their child's right to a free appropriate public education (FAPE) will end. (#32)*

Repeal of the requirement for written notice to parents of students with disabilities who are aging out of the school system. (#45)

It is important that parents are told when their child will age out of special education so they can plan adequately for the transition to adulthood. Transition planning, which



is legally required by the IDEA, requires that parents are provided with basic information pertinent to the aging out process. As with many of these proposals, we question how much money elimination of these requirements will save.

5. *Elimination of the requirements that BOE's have plans and policies for appropriate declassification of students with disabilities -- regular consideration for declassifying students when appropriate and the provision of educational and support services upon declassification. (#33)*

Appropriate declassification of students who no longer need special education services is in the best interests of the districts both educationally and financially. Without careful planning, declassification can become dumping, as students are thrown back into the mainstream without adequate support and eventually may need to return to special education for the help they need.

6. *Elimination of the requirement that the CSE/CPSE must provide a copy of the State's handbook for parents of students with disabilities or a locally approved handbook when a student is referred for special education. (#34)*

Parents who find themselves swimming through the morass of the special education system need information, and the handbooks are a straight-forward, relatively cost-effective way to provide it. Although AFC and other parent information centers are necessary and helpful in providing parents with the guidance they need, only school districts are in a position to reach every single parent of a child receiving special education services. In any event, federal law appears to require that a handbook be given to parents upon referral. 34 C.F.R. § 300.504(a).

7. *Elimination of the requirement that the parent selects the preschool evaluator from a distributed list of approved evaluators and capping of the growth of county contributions for preschool programs (##39, 40 Note 1)*

Note 1 implies that this proposal would not only eliminate the parent's ability to choose an evaluator, but would shift the burden of conducting evaluations from evaluation agencies to school district employees. We are very concerned that the school district, at least in New York City, does not have the capacity or training needed to conduct preschool evaluations. Currently, the CPSE in New York City struggles to hold initial IEP meetings within the compliance date and often does not meet the deadline. This proposal would cause further delays for very young children in need of services.

Furthermore, most school district employees have no training or experience evaluating young children. Children are referred from Early Intervention to the CPSE when they are as young as two-and-a-half years old, and the assessment tools used with young children are often different from those used with school-aged students. The cost of training school district employees to administer evaluations to young children must be considered.



We do not understand the proposal in Note 1 suggesting the possibility that the growth of county contributions to preschool programs be capped. The State is required to serve all children eligible for preschool programs, and school districts should not be penalized and asked to absorb the cost of identifying a growing number of preschoolers eligible to receive services. In fact, identifying and serving children with special needs as early as possible is cost-effective in the long run.

8. *Reduction of the two-year statute of limitations on commencement of an impartial hearing to one year. (#37)*

The State has put forward this recommendation for many years, and we have regularly opposed it for a number of reasons. The primary reason is that a reduction in the statute of limitations will primarily harm low-income parents who have trouble finding a lawyer. Wealthier parents have plenty of lawyers to represent them and will do whatever they have to do to file their claims on time. In addition, a one-year statute of limitations will create incentives for parents to file claims quickly, rather than trying to resolve their differences amicably. If the State wants to reduce litigation, it should instead ensure that school districts (New York City in particular) send representatives to resolution sessions who are familiar with the cases and have authority to settle. Although litigants are required to attend these resolution sessions, we often find the district's representatives unprepared and not empowered to reach a settlement. Overall, we believe strongly that the answer to soaring special education costs is improvement of the educational system rather than curtailment of parents' due process rights.

AFC was started back in 1971, before the passage of the Individuals with Disabilities Education Act, when it was not unusual for children with disabilities to be excluded from school altogether. As an institution, we remember that it took government mandates to open the schoolhouse doors to all children and give them a right to an education that meets their needs, instead of just warehousing them. Unfortunately, government mandates were necessary then, and they continue to be necessary to protect students with disabilities against school districts facing enormous pressures to save money and raise test scores wherever they can. Please do not remove these essential protections from some of the most vulnerable students who need them.

We would be happy to discuss this matter further and to answer any questions you may have.

Sincerely,

Kim Sweet



cc: David Steiner, Commissioner, New York State Department of Education
Rebecca Cort, Associate Commissioner for Special Education, New York State
Department of Education
Members of the New York State Board of Regents
Members of the Mandate Relief Redesign Team
Assemblywoman Cathy Nolan, Chair State Assembly Education Committee
Senator John J. Flanagan, Chair State Senate Education Committee