

APPENDIX



NEW JERSEY ASSOCIATION OF SCHOOL ADMINISTRATORS

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Testimony Regarding Special Education Joint Committee on Public Schools March 22, 2017

Submitted by: Dr. Gerard Crisonino, NJASA Special Education Committee Chair

I am honored to speak before this esteemed committee on the matter of Special Education services in our New Jersey Public Schools. First, by way of introduction, let me tell you a little about myself. Currently, I am the proud Director of Special Education in the Jersey City Public Schools meeting the daily needs of 4000 plus Students with Disabilities (SWD). I am the recipient of the 2015 New Jersey Special Education Administrator of the Year Award, as well as a representative of special education on the NJSBA's special education committee and the Committee of Partners on the Every Student Succeeds Act (ESSA). Moreover, I Chair NJASA's subcommittee on special education, and it is in that capacity that I come before you today.

As you are cognizant, New Jersey currently has approximately 250,000 students who receive special education services on a daily basis. Despite learning, physical or behavioral challenges that often impede their school progress, they possess a myriad of strengths and talents that equal or oftentimes exceed their typical peers. However, for many, the realization of their dreams can only be met through the delivery of specialized programs that target their individualized needs while fostering their unique growth, and this is our challenge.

Today, I would like to address what I believe are three areas of concern to not only those students and families, but to the thousands of hardworking, dedicated professionals who toil each day in the quest to ready our students for a productive life. Specifically, I would like to discuss the funding of programs and services, the importance of preparing our students for post-secondary success in a very competitive world that oftentimes values uniformity over individuality, and finally the need for a more fair and educationally useful statewide assessment to drive instruction.

Having served on my local Board of Education for the past thirteen years, I am acutely aware of the financial burdens placed upon both the taxpayers and local educational agencies as escalating costs and unfunded mandates tax our fiscal resources even greater than ever. While the ever rising cost of delivering a free, appropriate, public education to Students with Disabilities can exhaust a significant amount of a District's budget, it can not be ignored that anecdotal evidence suggests that the complexity of the disability of our students has dramatically increased over the past years. Indeed, the need for individual aides for such issues as mobility, the need for in-school individualized nursing services, and the increased demands of occupational, physical and speech therapy to assist the student in his/her daily school functioning, when one can find such professionals, while enabling more and more students to receive their

instruction in the Least Restrictive Environment, has exponentially driven the cost of educating these students to new levels. Although, as professionals and advocates for our students, we welcome the ability to provide the necessary tools for most of our students to remain in inclusive settings, funding issues often complicate the provision of such services. I am aware of one particular District that expended over one million dollars in individualized nursing services last year, reflecting a seventy-five percent increase over the past few years, in order to maintain students within district settings.

Complicating this is the ever-increasing rise in Out of District (OOD) tuition rates, sometimes up to ten percent a year, for those students whose disabilities are so significant that providing an in-district education would be prohibitive. Thus, despite most school districts having created local program options that allow their Students with Disabilities to remain in their home districts, thus resulting in less students being enrolled in OOD schools, their budgets see no relief due to escalating OOD tuitions that far outpace the normal rate of cost increases. Hence, these spiraling tuition rates, coupled with the rapid rise in high-priced related services to meet many a student's physical and learning demands, necessitates the importance of maintaining an adequate funding formula that affords our most vulnerable children a parallel educational experience.

Secondarily, while the aforementioned allows for equitable educational options, one must examine whether our educational philosophy truly readies our students to become productive members of our community; which is our ultimate goal. Specifically, I call into question the frequently quoted education mantra of "preparing our students to be College and Career Ready". While none of us would argue that ultimately this does need to be the focus of our schools, I oftentimes wonder if the educational pundits do not really mean, "preparing our students for a Career in College". Indeed, for many of our SWD, as well as large numbers of their general education peers, a traditional college experience may not be in their immediate future. This begs to question if indeed we are properly focusing on the strengths of all students as we have reduced programs and funding for career pathways that historically helped us to provide our children the skills needed to engage in meaningful and successful careers in non-college related fields. When did it become unpopular to pursue employment in technical careers, many of which are the foundation of our great economy, whether it is in such fields as electricity or plumbing, computer technical science, or even culinary arts. Yes, most of our schools offer a few educational options in these areas, and indeed our County Technical Schools do exceptionally well training students in such fields, but robust training programs within most of our schools, of course coupled with traditional educational classes, have been decreased as budget constrictions occur. Thus, gone are many of the vocational training programs that so many of our children need, and, indeed, our rapidly changing economy demands.

So, as our great Country hopefully strengthens its position in the global marketplace, let us invest in our children, both those with and without disabilities, to take advantage of career options that better fit their unique capabilities.

Finally, in order to properly determine the efficacy of the instructional programs we offer in each of our Districts, one cannot argue that a common measure of learning readiness is not a useful tool. However, our current Statewide Assessment, the PARCC, places our SWD at a distinct disadvantage while providing little instructional usefulness to our

educational programming. For instance, as you are aware, students receive these assessments based on chronological measures that seek to determine how proficient a particular grade-level student is on his/her current chronological level. While for many this seems quite logical, as we need multiple sources of data to assess our instruction and curricula offerings, for those SWD it is oftentimes an exercise in futility. Indeed, by the very nature of many of our students, who require special educational instruction at their cognitive or functioning abilities as opposed to their chronological levels, would suggest that a large portion of these students would not meet proficiency levels. Take, for example, a thirteen year-old severe learning disabled student who is functioning not on the seventh grade level, but, say, a third grade level. While the quest of his/her Individualized Education Plan would be to enable him/her to approximate grade level learning as best he/she can, it is pretty clear that his/her proficiency on a seventh grade assessment would not be very realistic. Perhaps, due to splinter skills, he/she may be able to show some grade level knowledge, but in most instances, this assessment would yield no real diagnostic data that would assist the teacher in developing useful instructional programs. In fact, in most circumstances, such an assessment serves only to frustrate the student and further deflates his/her self-esteem that might already be fragile due to a learning disability. Hence, it would be much more logical to create a tool, perhaps adaptive in nature, that truly assesses if learning is occurring; for is that not the logic behind statewide assessments? Currently, for those students who exhibit significant cognitive delays, they receive their assessment through the use of the Dynamic Learning Maps. However, students with Mild Intellectual Impairments are expected to be assessed using the PARCC. This alternate tool allows for data to be gathered in an adaptive manner; thus, yielding more useful information that benefits the student and does not just meet a one-size-fits all criteria.

So, in summation, let me thank you for allowing me, as a representative of NJASA, to address the importance in considering the increased educational costs in meeting the needs of a significantly more disabled student population, while developing additional vocational options to better prepare our students for post-secondary success, in any school funding formula that you might consider. In addition, any consideration to a fairer, more educationally useful statewide assessment to drive instruction, perhaps adaptive in nature, would truly be time and money well spent.



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**Testimony Regarding Special Education
Joint Committee on Public Schools
March 22, 2017**

Submitted By: Melanie Schulz, NJASA Director of Government Relations

Members of the Joint Committee on the Public Schools, thank you for inviting NJASA to participate in this hearing on special education.

At NJASA, we are constantly looking at special education and, in fact, have an entire committee devoted to looking at Federal and State policy, and we use this as an opportunity for our school leaders to come together and exchange both their challenges and their remedies. They learn a lot from each other in this space.

On Testing

The IEP that informs a student's instruction should also inform their assessment. More often than not, students are forced to take an assessment based on their age and not their IEP.

Not only is there absolutely no value to this, it is also extremely frustrating to the students, the parents and the teachers.

Using the IEP to inform the assessments would provide the students and parents with information on the student's progress and the teacher would know if the strategies that they were using were of value or not.

On Funding

Recommendation #1 of the NJ Task Force on Improving Special Education for Public Schools Students, issued August 2015.

The New Jersey Legislature should reevaluate the school funding formula with a particular eye on how state special education aid reaches and impacts all New Jersey students eligible for special education and related services. The New Jersey Legislature should review the impact of SFRA by directing the Department to analyze and reevaluate the state funding formula and create a formula that stabilizes general and special education funding and ensures that state aid follows students eligible for special education and related services as well as general education students.

Rationale Recommendation #1: SFRA does not generate special education costs for each student eligible for special education and related services individually, as it does for other groups through student weights. The Task Force believes that an effective formula must provide additional cost factors based on the actual number of special education students in each district rather than applying the state average classification rate.

Special education costs are rising at the rate of 6-8% a year. This rise beyond the cap causes resources to be reallocated from general education to special education programs.

We educate all regardless of ability or disability but we ask that the Legislature do a deep dive on special education costs when considering a new funding method – whether it be a new formula or amending SFRA.

On Placement

Recommendation #3: of the NJ Task Force on Improving Special Education for Public Schools Students, issued August 2015.

As part of the continuum of placement options, the Department should encourage school districts and charter schools to establish partnerships with agencies such as special services school districts, educational service commissions, jointure commissions, approved private schools for students with disabilities, as well as other school districts, to increase the provision of programs and services for students eligible for special education and related services in their neighborhood schools.

We would add that the first step for placement should be through the utilization of the expertise of educational service commissions, jointure commissions or special services school districts. These are well positioned organizations that would have information not only about what placements are available in their immediate area, but also, and most importantly, provide appropriate special services that are not available in local districts.

On Transportation

We hear from a lot of districts on issues with transportation, so this problem is not limited to special education transportation, but it is worth noting that both finding drivers as well as the spiraling costs are putting yet another financial demand on already over-stressed school budgets.

We would recommend that the Legislature take an in-depth look at these costs when considering a new funding mechanism.

Joint Committee on the Public Schools
Testimony
Special Education
March 22, 2017

Good morning members of the Committee, my name is Marybeth Beichert. I am an Associate Director of Government Relations with the New Jersey Education Association. I am here today, with my colleague and special education expert, Camy Kobylinski, Associate Director of Professional Development and Instructional Issues. Thank you for -inviting us to speak about important issues surrounding special education.

Both Camy and I have had the honor to work with students with special needs in our professional careers; I was an eighth-grade literacy teacher who worked in an inclusion classroom for most of my teaching career, and Camy served as a social worker on her school district's child study team (CST).

We are thankful for this opportunity to share some thoughts about how to advance special education in our state. NJEA believes that:

- All students with special needs are entitled to a free, appropriate public education in the least restrictive environment as determined with maximum teacher and parent/ guardian involvement.
- Teachers who serve students with disabilities must have scheduled collaboration time with any and all resource personnel. That may include instructional assistants, paraprofessionals, co-teachers, special education teachers, and other appropriate resource service providers and specialists.
- Inadequate school funding is having a negative effect on special education students; and
- We must protect our special needs students from the unintended consequences of subcontracting arrangements.

Let's first address the value and importance of collaboration.

Educating students is the job of every staff member in a school building. First and foremost, Educational Support Professionals are essential to everyone who has ever worked in a special needs environment. And, just like many of our legislators who rely on their staff to help them do their job well, our teachers need that same type of time for discussion and collaboration. When

teachers and paraprofessionals or teaching assistants have time to discuss plans in advance, and each knows what the student needs, the day flows seamlessly and there is less likelihood for meltdowns or unnecessary distractions.

This idea is supported in New Jersey Administrative Code under program criteria: supplementary aids and services which states:

The district board of education shall provide the teacher aide and the appropriate general or special education teaching staff time for consultation on a regular basis, which shall be set forth in policies adopted by the district board of education. 6A:14-4.5 (d)

For your information, we have provided each of you with a booklet with the relevant information so that you and your staff can read further on this issue.

Unfortunately, this is where many of our districts experience a disconnect between what is in code and what is reality. Many schools are not providing adequate time for collaboration. Our students face a myriad of issues that must be addressed. They need strategies and accommodations that a good team knows how to implement. Our members, regardless of job category, want to collaborate. And, they are struggling to find ways to do so.

Let me give you an example. Recently, I presented a workshop about special education regulations to a group of paraprofessionals. They shared stories about their classroom experiences and their role in the school community. They spoke of their strong desire to collaborate with each other, with their teacher partners and with other professionals in the school. Since they do not have time built into their day for collaboration, they strategized about ways to accomplish this goal. Some talked about coming into work early or catching up with colleagues during a lunch break - all in an effort to meet students' needs. I hear the similar stories as I travel throughout the state.

Our members' efforts to meet students' needs are admirable, but they should be supported, and they should not have to face financial hardships in order to do so. Scheduling is always a challenge, but it is possible when collaboration is the priority. It is unreasonable and onerous to ask support staff to come in early or stay late. Districts can and should provide a common period for teachers and other staff to work together.

Second, we would like to address the issue of funding. The 2015 NJ Task Force and NJEA recommend that SFRA should be amended to calculate Special Education Aid utilizing actual classification rates. An independent audit came to the same conclusion. It is troubling to hear that many staff feel pressured NOT to classify students for special education services because of funding pressures. And to draw on my earlier point, many districts cite funding as the primary reason why they cannot implement collaboration during the day.

For your information, and to help you understand just how underfunding affects special education students, we are providing a one-page paper on special education and school funding.

Insufficient funding is also leading to another danger to our special needs students - - and that is subcontracting.

Subcontracting, outsourcing or privatization makes collaboration nearly impossible and demoralizes staff. Lack of school funding or flat funding over the last several years has led to a surge of districts buying into the idea that subcontracting will save districts money. Not only does subcontracting NOT save money, but it also greatly reduces the quality and continuity of services available to our students. We could cite many examples of issues with private companies supplanting district support staff and the negative consequences that result from that decision. We would be happy to share with you some of the research on these private companies who promise the world but deliver vastly inferior service.

The bottom line is that schools cannot function without strong relationships. Everything educators do is interrelated. Those relationships are built and strengthened by time spent working together, in a collaborative learning atmosphere, to build an environment that meets the needs of every student. Please follow the code and enforce the invaluable cooperative time our staff need and our students require.

Going forward, we ask that the Legislature ensure that the school funding formula is implemented as it was written, and that you do all you can to support the work of all of the school employees (teachers, as well as, educational support professionals) who spend their days helping special needs students succeed.

March 22, 2017

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Special Education Funding Background Information

Before the implementation of the SFRA school funding formula in 2009, state aid for special education was designed to fund those costs attributed to individual special education students over and above the costs for students in general education programs. These “excess costs” became part of the aid formula that supported special education children and was calculated on a specific per pupil basis. This type of “categorical special education aid” flowed to all school districts regardless of wealth.

The current School Funding Reform Act uses a “per pupil” formula for calculating state aid for almost every identified educational need - - at-risk students living in poverty, Limited English Proficiency students, vocational education students, *etc.* - - but, *not* Special Education students! Instead, under SFRA, special education costs are calculated by using the statewide classification rate (set for several years at approximately 14.69 percent) and multiplying that rate times each local district’s total student enrollment. The result is then multiplied by the state-average “excess cost” factor (approximately fifteen thousand dollars). This process is known as “census-based funding.” It acts against the direct opposition to the intent of SFRA to distribute aid to all school districts in an equitable and predictable basis that takes into account the needs of all students, wherever they live. Instead, districts with above average special education enrollments are shortchanged in their state aid; districts with below average enrollments receive a windfall.

This was recognized in last year’s report from the Office of the State Auditor, who stated that the use of an average classification rate “is only reasonable if districts have an insignificant deviation from the average.” That is not the case in New Jersey where, at least in districts with 100 or more special education students, 59-64% had an actual classification rate of more than 10 percentage points from the statewide average rate. “As a result, district funding is not commensurate with actual enrollment of classified students in many instances.”

The State Auditor’s recommendation is in line with the 2015 “New Jersey Task Force on Improving Special Education for Public School Students” and our Association. The SFRA should be amended to calculate Special Education Aid utilizing actual classification rates. Outside consultants retained by the state in 2011 made the same recommendation.

Another flaw in the current funding formula for Special Ed is the limited differentiation of disabilities and services. In other words, the census formula only allocates excess costs for two categories of special education services. First, the “general special education” category, fixed at around 14.7% of enrollment, with excess cost around \$15,000 per pupil, and then around another 1.8% of enrollment are classified as “speech only” students, receiving excess costs of around \$1,200 per pupil. Finally, districts receive “extraordinary special education aid” representing 75-90% of actual costs exceeding a threshold of \$40,000-\$55,000 for high needs students (depending upon whether the placement is in-district or out of district, and in a public or private facility).

But there is a wider variety of classifications besides “speech only” and “everything else,” and the outside consultants recognized certain relationships between schools, demographics, disabilities, and costs. Certainly the Special Education aspects of the SFRA could be revised to more accurately reflect the real costs of services.

Finally, but most importantly, any school funding formula needs to be fully funded. Eight years of underfunding the SFRA formula by a cumulative \$8 billion or so affected special education students at least as much as other New Jersey schoolchildren. And this committee should be aware that all state aid that is nominally “special education aid” is credited to a school district’s general fund and can be expended for any educational purpose. That means that funds calculated as the special education portion of a district’s equalization aid, a district’s categorical special education aid, and the extraordinary special education aid paid to a district do *not* have to be expended on special education services.

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IEPs / Amendments / The IEP Team

1. What must be included in an IEP?

From Section 6A:14-3.7(e)

- (e) With the exception of an IEP for a student classified as eligible for speech-language services, the IEP shall include, but not be limited to:
1. A statement of the student's present levels of academic achievement and functional performance, including, but not limited to:
 - i. How the student's disability affects the student's involvement and progress in the general curriculum; or
 - ii. For preschool students, as appropriate, how the disability affects the student's participation in appropriate activities;
 2. Where appropriate, a statement of detailed measurable annual academic and functional goals that shall, as appropriate, be related to the core curriculum content standards through the general education curriculum unless otherwise required according to the student's educational needs, or appropriate, student specific, functional needs. For all students, the annual academic and functional goals shall be measurable and apprise parents and educational personnel providing special education and related services to the student of the expected level of achievement attendant to each goal.
 3. Such measurable annual goals shall include benchmarks or short-term objectives related to:
 - i. Meeting the student's needs that result from the student's disability to enable the student to be involved in and progress in the general education curriculum; and
 - ii. Meeting each of the student's other educational needs that result from the student's disability;
 4. A statement of the special education and related services and supplementary aids and services that shall be provided for the student, or on behalf of the student. Such special education and related services and supplementary aides and services shall be based, to the extent practicable, on peer reviewed research. A statement of the program modifications or supports for school personnel that shall be provided for the student:
 - i. To advance appropriately toward attaining the measurable annual academic and functional goals;
 - ii. To be involved and progress in the general education curriculum according to (e)1 above and to participate in extracurricular and other nonacademic activities; and
 - iii. To be educated and participate with other students with disabilities and nondisabled students;
 5. A statement, as appropriate, of any integrated therapy services to be provided addressing the student's individualized needs in his or her educational setting.
 6. An explanation of the extent, if any, to which the student shall not participate with non-disabled students in the general education class and in extracurricular and nonacademic activities;
 7. A statement of any individual modifications in the administration of Statewide or districtwide assessments of student achievement needed for the student to participate in such assessment. If the IEP team determines that the student shall not participate in a particular general Statewide or districtwide assessment of student achievement (or part of such an assessment), a statement of why that assessment is not appropriate for the student

Where in the Special Education Regulations

- according to N.J.A.C. 6A:14-4.10 and a statement of how that student shall be assessed and which assessment methodology is appropriate for the student;
8. A statement which specifies the projected date for the beginning of the services and modifications described in (e)4 above, and the anticipated frequency, location, and duration of those services and modifications;
 9. Beginning at age 14, a statement of the State and local graduation requirements that the student shall be expected to meet. The statement shall be reviewed annually. If a student with a disability is exempted from, or there is a modification to, local or State high school graduation requirements, the statement shall include:
 - i. A rationale for the exemption or modification based on the student's educational needs which shall be consistent with N.J.A.C. 6A:14-4.11; and
 - ii. A description of the alternate proficiencies to be achieved by the student to qualify for a State endorsed diploma.
 10. A statement of student's transition from an elementary program to the secondary program which shall be determined by factors including number of years in school; social, academic and vocational development; and chronological age;
 11. Beginning with the IEP in place for the school year when the student will turn age 14, or younger if determined appropriate by the IEP team, and updated annually:
 - i. A statement of the student's strengths, interests and preferences;
 - ii. Identification of a course of study and related strategies and/or activities that:
 - (1) Are consistent with the student's strengths, interests, and preferences; and
 - (2) Are intended to assist the student in developing or attaining postsecondary goals related to training, education, employment and, if appropriate, independent living;
 - iii. As appropriate, a description of the need for consultation from other agencies that provide services for individuals with disabilities including, but not limited to, the Division of Vocational Rehabilitation Services in the Department of Labor; and
 - iv. As appropriate, a statement of any needed interagency linkages and responsibilities;
 12. Beginning with the IEP in place for the school year when the student will turn age 16, or younger if deemed appropriate by the IEP team, a statement consisting of those elements set forth in (e)11 above and appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and, if appropriate, independent living and the transition services including a course of study needed to assist the child in reaching those goals.
 - i. The transition services as defined in IDEA shall consist of a coordinated set of activities for a student with a disability that is designed within a results-oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation, and be based on the individual student's needs, taking into account the student's strengths, preferences and interests. In addition to the above, transition services shall include:
 - (1) Instruction;
 - (2) Related services;
 - (3) Community experiences;
 - (4) The development of employment and other post-school adult living objectives; and

- (5) If appropriate, acquisition of daily living skills and functional vocational evaluation;
13. The person(s) responsible to serve as a liaison to postsecondary resources and make referrals to the resources as appropriate. If the student with disabilities does not attend the IEP meeting where transition services are discussed, the district board of education or public agency shall take other steps to ensure that the student's preferences and interests are considered;
14. Beginning at least three years before the student reaches age 18, a statement that the student and the parent have been informed of the rights under this chapter that will transfer to the student on reaching the age of majority;
15. A statement of how the student's progress toward the annual goals described in (e)2 above will be measured;
16. A statement of how the student's parents will be regularly informed of their student's progress toward the annual goals and the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the year. The parents of a student with a disability shall be informed of the progress of their child at least as often as parents of a nondisabled student are informed of their child's progress; and 17. For students in an out-of-district placement, the IEP shall set forth how the student will participate with nondisabled peers in extracurricular and nonacademic activities, and delineate the means to achieve such participation, including, if necessary, returning the student to the district in order to effectuate such participation.

2. May an IEP be amended?

From Section 6A:14-3.7(d)

- (d) The IEP may be amended without a meeting of the IEP team as follows:
 1. The IEP may be amended if the parent makes a written request to the district board of education for a specific amendment to a provision or provisions of the IEP and the district agrees;
 2. The school district provides the parent a written proposal to amend a provision or provisions of the IEP and, within 15 days from the date the written proposal is provided to the parent, the parent consents in writing to the proposed amendment;
 3. All amendments pursuant to (d)1 and 2 above shall be incorporated in an amended IEP or an addendum to the IEP, and a copy of the amended IEP or addendum shall be provided to the parent within 15 days of receipt of parental consent by the school district; and
 4. If an IEP is amended pursuant to this subsection, such amendment shall not affect the requirement in 6a:14-3.7(i) that the IEP team review the IEP at a meeting annually, or more often if necessary.

3. How is a case manager selected?

From Section 6A:14 - 3.2(a)

- (a) A case manager shall be assigned to a student when it is determined that an initial evaluation shall be conducted. Child study team members or speech-language specialists when they act as members of the child study team shall be designated and serve as the case manager for each student with a disability.

Where in the Special Education Regulations

4. What are the case manager's responsibilities?

From Section 6A:14 - 3.2(b) and (c)

- (b) The case manager shall coordinate the development, monitoring and evaluation of the effectiveness of the IEP. The case manager shall facilitate communication between home and school and shall coordinate the annual review and reevaluation process.
- (c) The case manager shall:
 - 1. Be knowledgeable about the student's educational needs and program;
 - 2. Be knowledgeable about special education procedures and procedural safeguards;
 - 3. Have an apportioned amount of time for case management responsibilities; and
 - 4. Be responsible for transition planning.

5. Who is required to participate in the initial eligibility meeting? Can the referring teacher attend the initial eligibility meeting?

From Section 6A:14 - 2.3(k)1.

- 1. Any eligibility meeting for students classified according to N.J.A.C. 6A:14-3.5(c) shall include the following participants:
 - i. The parent;
 - ii. A teacher who is knowledgeable about the student's educational performance or, if there is no teacher who is knowledgeable about the student's educational performance, a teacher who is knowledgeable about the district's programs;
 - iii. The student, where appropriate;
 - iv. At least one child study team member who participated in the evaluation;
 - v. The case manager;
 - vi. Other appropriate individuals at the discretion of the parent or school district; and
 - vii. For an initial eligibility meeting, certified school personnel referring the student as potentially having a disability, or the school principal or designee if they choose to participate.

6. What happens if a team member disagrees with the finding of the team?

From Section 6A:14-3.4(h)5

- 5. Additionally each team member shall certify in writing whether his or her report is in accordance with the conclusion of eligibility of the student. If his or her report does not reflect the conclusion of eligibility, the team member must submit a separate statement presenting his or her conclusions.

7. Who is required to participate in an IEP meeting?

From Section 6A:14-2.3(k)2

- 2. Meetings of the IEP team shall include the following participants:
 - i. The parent;
 - ii. Not less than one general education teacher of the student, if the student is or may be

- participating in the general education classroom;
- (1) If the student has no general education teacher, a general education teacher who is knowledgeable about the district's programs shall participate;
 - (2) The general education teacher as a member of the IEP team must, to the extent appropriate, participate in the development, review, and revision of the student's IEP;
 - (3) The general education teacher shall assist in the determination of appropriate positive behavioral interventions and strategies; and
 - (4) The general education teacher shall assist in the determination of supplementary aids and services, program modifications or supports for school personnel that will be provided for the student;
- iii. Not less than one special education teacher of the student or, where appropriate, not less than one special education provider of the student;
 - (1) If there is no special education teacher or special education provider of the student, a special education teacher or provider who is knowledgeable about the district's programs shall participate;
 - iv. At least one child study team member who can interpret the instructional implications of evaluation results;
 - v. The case manager;
 - vi. A representative of the responsible district who:
 - (1) Is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities;
 - (2) Is knowledgeable about the general education curriculum;
 - (3) Is knowledgeable about the availability of resources of the district board of education; and
 - (4) Shall be the child study team member or other appropriate school personnel including the special education administrator or principal;
 - vii. At the discretion of the parent or school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate;
 - (1) The determination of the special knowledge or expertise shall be made by the party (parent or school district) who invited the individual;
 - viii. The student where appropriate;
 - ix. At the request of the parent, the Part C Service Coordinator for a student transitioning from Part C to Part B; and
 - x. If a purpose of the meeting is to consider transition services, the student with disabilities and a representative of any other agency that is likely to be responsible for providing or paying for transition services shall be invited to attend the IEP meeting.

8. What general education teacher is the appropriate person to attend the initial eligibility meeting or meetings to develop or review the IEP?

From Section 6A:14 -2.3(k)1.ii, vii and 2.3 (k)2.ii

Initial Meeting (From Section 6A:14 -2.3(k)1.ii, vii)

- ii. A teacher who is knowledgeable about the student's educational performance or, if there is no teacher who is knowledgeable about the student's educational performance, a teacher who is knowledgeable about the district's programs.

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- vii. For an initial eligibility meeting, certified school personnel referring the student as potentially having a disability or the school principal or designee if they choose to participate.

Meeting to develop or review the IEP (From Section 6A:14 -2.3(k)2.ii)

- ii. Not less than one general education teacher, of the student, if the student is or may be participating in the general education classroom.
 - (1) If the student has no general education teacher, a general education teacher who is knowledgeable about the district's programs shall participate;
 - (2) The general education teacher as a member of the IEP team must, to the extent appropriate, participate in the development, review, and revision of the student's IEP;
 - (3) The general education teacher shall assist in the determination of appropriate positive behavioral interventions and strategies; and
 - (4) The general education teacher shall assist in the determination of supplementary aids and services, program modifications or supports for school personnel that will be provided for the student;

9. Who can tape an IEP meeting?

From Section 6A:14 - 2.3(k)8

8. Participants at the IEP meeting shall be allowed to use an audio tape recorder during the meeting provided notice is given to the other participants prior to the start of the meeting that such a device is being utilized.

10. When must an IEP be in effect?

From Section 6A:14 - 3.7(a)

- (a) A meeting to develop the IEP shall be held within 30 calendar days of a determination that a student is eligible for special education and related services or eligible for speech-language services. An IEP shall be in effect before special education and related services are provided to a student with a disability and such IEP shall be implemented as soon as possible following the IEP meeting.
 1. At the beginning of each school year, the district board of education shall have in effect an IEP for every student who is receiving special education and related services from the district.
 2. Every student's IEP shall be accessible to each regular education teacher, special education teacher, related services provider, and other service provider who is responsible for its implementation;
 3. The district board of education shall inform each teacher and provider described in (a)2 above of his or her specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports to be provided for the student in accordance with the IEP. The district board of education shall maintain documentation that the teacher and provider, as applicable, has been informed of his or her specific responsibilities related to implementing the student's IEP; and
 4. The district board of education shall ensure that there is no delay in implementing a student's IEP including any case in which the payment source for providing or paying for special education and related services is being determined.

11. How is the IEP reviewed or revised during the school year?

From Section 6A:14 - 3.7(i)

- (i) Annually, or more often if necessary, the IEP team shall meet to review and revise the IEP and determine placement as specified in this subchapter.
 - 1. The annual review of the IEP for a preschool student with disabilities shall be completed by June 30 of the student's last year of eligibility for a preschool program.
 - 2. The annual review of the IEP for an elementary school student with disabilities shall be completed by June 30 of the student's last year in the elementary school program. The annual review shall include input from the staff of the secondary school.

12. Are signatures required?

From Section 6A:14 - 3.7(l)

- (1) Signatures of those persons who participated in the meeting to develop the IEP shall be maintained and either a copy of the IEP or written notes setting forth agreements with respect to the IEP as determined by the IEP team shall be provided to the parents at the conclusion of the meeting.

13. Does the IEP indicate the educational program and placement for a student? Does the IEP consider supports necessary for school personnel to implement the IEP?

From Section 6A:14 - 3.7(e)4 & 8

- (e) With the exception of an IEP for a student classified as eligible for speech-language services, the IEP shall include, but not be limited to:
 - 4. A statement of the special education and related services and supplementary aids and services that shall be provided for the student, or on behalf of the student. Such special education and related services and supplementary aides and services shall be based, to the extent practicable, on peer reviewed research. A statement of the program modifications or supports for school personnel that shall be provided for the student:
 - i. To advance appropriately toward attaining the measurable annual academic and functional goals;
 - ii. To be involved and progress in the general education curriculum according to (e) 1 above and to participate in extracurricular and other nonacademic activities; and
 - iii. To be educated and participate with other students with disabilities and nondisabled students;
 - 8. A statement which specifies the projected date for the beginning of the services and modifications described, and the anticipated frequency, location, and duration of those services and modifications.

14. What information shall be provided to school personnel on behalf of the student?

From Section 6A:14 - 3.7(a)

- (a) A meeting to develop the IEP shall be held within 30 calendar days of a determination that a student is eligible for special education and related services or eligible for speech-language services. An IEP shall be in effect before special education and related services are provided to a student with a disability and such IEP shall be implemented as soon as possible following the IEP meeting.
1. At the beginning of each school year, the district board of education shall have in effect an IEP for every student who is receiving special education and related services from the district;
 2. Every student's IEP shall be accessible to each regular education teacher, special education teacher, related services provider, and other service provider who is responsible for its implementation;
 3. The district board of education shall inform each teacher and provider described in (a) 2 above of his or her specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports to be provided for the student in accordance with the IEP. The district board of education shall maintain documentation that the teacher and provider, as applicable, has been informed of his or her specific responsibilities related to implementing the student's IEP; and
 4. The district board of education shall ensure that there is no delay in implementing a student's IEP including any case in which the payment source for providing or paying for special education and related services is being determined.

General & Special Education Teacher Responsibilities

15. What are the general education teachers' responsibilities to provide intervention?

From Section 6A:14 - 3.3(b) & 6A:14 - 3.3 (c)

- (b) Interventions in the general education setting shall be provided to students exhibiting academic difficulties and shall be utilized, as appropriate, prior to referring a student for an evaluation of eligibility for special education and related services.
 - 1. Within Abbott districts, the system of assessment and interventions within general education programs according to N.J.A.C.6A:10A-3.1 shall be implemented for all students who have reading as their primary area of difficulty.
- (c) The staff of the general education program shall maintain written documentation, including data setting forth the type of interventions utilized, the frequency and duration of each intervention, and the effectiveness of each intervention.
 - 1. When it is determined through analysis of relevant documentation and data concerning each intervention utilized that interventions in the general education program have not adequately addressed the educational difficulties, and it is believed that the student may have a disability, the student shall be referred for evaluation to determine eligibility for special education programs and services under this chapter.
 - 2. A determination whether or not to conduct an evaluation shall be made in accordance with (e) below.

16. What are the roles and responsibilities of the general education teacher in relation to speech/language services?

From Section 6A:14 - 3.6(b)

- (b) The evaluation for a speech disorder shall be conducted according to N.J.A.C. 6A:14-3.4(g). Documentation of the educational impact of the speech problem shall be provided by the student's teacher. The speech disorder must meet the criteria in (b) 1, 2, and/or 3 below and require instruction by a speech-language specialist:
 - 1. Articulation/phonology: On a standardized articulation or phonology assessment, the student exhibits one or more sound production error patterns beyond the age at which 90 percent of the population has achieved mastery according to current developmental norms and misarticulates sounds consistently in a speech sample.
 - 2. Fluency: The student demonstrates at least a mild rating, or its equivalent, on a formal fluency rating scale and in a speech sample, the student exhibits disfluency in five percent or more of the words spoken.
 - 3. Voice: On a formal rating scale, the student performs below the normed level for voice quality, pitch, resonance, loudness or duration and the condition is evident on two separate occasions, three to four weeks apart, at different times.

17. Who has the primary instructional responsibility for the student in an in-class support or pull-out replacement resource program?

From Section 6A:4.6 (i), (j) & (l)

- (i) In an in-class resource program, the student shall be provided modifications to the instructional strategies or testing procedures or other specialized instruction to access the general education

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curriculum in accordance with the student's IEP. The primary instructional responsibility for the student in an in-class resource program shall be the general education teacher unless otherwise specified in the student's IEP. An in-class resource program shall be provided in the student's general education class at the same time as the rest of the class. A student receiving an in-class resource program or an in-class program of supplementary instruction shall be included in activities such as group discussion, special projects, field trips and other regular class activities as deemed appropriate in the student's IEP.

- (j) In a pull-out replacement resource program, the general education curriculum and the instructional strategies may be modified based on the student's IEP. The resource program teacher shall have primary instructional responsibility for the student in the replacement resource program and shall consult with the general classroom teacher as appropriate.
- (l) When organizing a pull-out replacement resource class, the district board of education shall consider the commonality of the instructional needs for the subject area being taught according to the levels of academic achievement, learning characteristics and management needs of the students to be placed in the class. The resource program teacher shall provide the primary instruction for the students in the class.

18. How does a teacher report student progress?

From Section 6A:14-3.7(e)16

- (e) With the exception of an IEP for a student classified as eligible for speech-language services, the IEP shall include, but not be limited to:
 - 16. A statement of how the student's parents will be regularly informed of their student's progress toward the annual goals and the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the year. The parents of a student with a disability shall be informed of the progress of their child at least as often as parents of a nondisabled student are informed of their child's progress; and

19. What is the appropriate certification for supplementary instruction?

From Section 6A:14 - 4.6(c)

- (c) A teacher providing supplementary instruction shall be appropriately certified either for the subject or the level in which instruction is given.

20. What is the appropriate certification for resource program?

From Section 6A:14 - 4.6(d) & (f)

- (d) In class resource programs and pull-out replacement resource programs are programs of specialized instruction organized around a single subject and are provided to students with disabilities by an appropriately certified teacher of students with disabilities. Instruction in more than one subject may be provided in a pull-out resource program.
- (f) If the resource program solely serves students with a visual impairment, the teacher shall be certified as a teacher of blind or partially sighted. If the resource program solely serves students with an auditory impairment, the teacher shall be certified with the appropriate teacher of the deaf and/or hard of hearing certificate.

21. What is supplementary instruction?

From Section 6A:14 - 4.6 (a) & (b)

- (a) Supplementary instruction is provided to students with disabilities in addition to the primary instruction for the subject being taught. The program of supplementary instruction shall be specified in the student's IEP.
- (b) Supplementary instruction in (a) above shall be provided individually or in groups according to the chart below. Supplementary instruction may be provided in a general education class or in a pull-out classroom that meets the requirements of N.J.A.C. 6A:26-6. Instruction in more than one subject may be provided in a pull-out program of supplemental instruction.

22. What are resource programs?

From Section 6A:14 - 4.6

- (d) In class resource programs and pull-out replacement resource programs are programs of specialized instruction organized around a single subject and are provided to students with disabilities by an appropriately certified teacher of students with disabilities. Instruction in more than one subject may be provided in a pull-out resource program.
- (e) Resource programs shall offer individual and small group instruction to students with disabilities. Resource programs may be provided in a general education class or in a pull-out classroom that meets the requirements of N.J.A.C. 6A:26-6. When a resource program is provided, it shall be specified in the student's IEP. Resource programs shall provide instruction as defined in (i) and (j) below. In class resource teachers may provide support and replacement instruction at the same time in accordance with the group size limits for in-class support in (m) below. Pull-out support and pull-out replacement shall not be provided by the same teacher at the same time.
- (h) An in-class resource program or an in-class program of supplementary instruction may be provided up to the student's entire instructional day. At the elementary level, replacement pull-out resource classes may be provided for up to no more than three subject areas per day. At the secondary level, replacement pull-out resource classes may be provided for up to the entire instructional day.
- (i) In an in-class resource program, the student shall be provided modifications to the instructional strategies or testing procedures or other specialized instruction to access the general education curriculum in accordance with the student's IEP. The primary instructional responsibility for the student in an in-class resource program shall be the general education teacher unless otherwise specified in the student's IEP. An in-class resource program shall be provided in the student's general education class at the same time as the rest of the class. A student receiving an in-class resource program or an in-class program of supplementary instruction shall be included in activities such as group discussion, special projects, field trips and other regular class activities as deemed appropriate in the student's IEP.
- (j) In a pull-out replacement resource program, the general education curriculum and the instructional strategies may be modified based on the student's IEP. The resource program teacher shall have primary instructional responsibility for the student in the replacement resource program and shall consult with the general classroom teacher as appropriate.
- (l) When organizing a pull-out replacement resource class, the district board of education shall consider the commonality of the instructional needs for the subject area being taught according to the levels of academic achievement, learning characteristics and management needs of the students to be placed in the class. The resource program teacher shall provide the primary instruction for the students in the class.

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23. Do special education students always need to be instructed by a teacher certified in Special Education?

From 6A:14-4.6

- (c) A teacher providing supplementary instruction shall be appropriately certified either for the subject or the level in which instruction is given.
- (d) In-class resource programs and pull-out replacement resource programs are programs of specialized instruction organized around a single subject and are provided to students with disabilities by an appropriately certified teacher of students with disabilities. Instruction in more than one subject may be provided in a pull-out resource program.
- (f) If the resource program solely serves students with a visual impairment, the teacher shall be certified as a teacher of blind or partially sighted. If the resource program solely serves students with an auditory impairment, the teacher shall be certified with the appropriate teacher of the deaf and/or hard of hearing certificate.
- (i) In an in-class resource program, the student shall be provided modifications to the instructional strategies or testing procedures or other specialized instruction to access the general education curriculum in accordance with the student's IEP. The primary instructional responsibility for the student in an in-class resource program shall be the general education teacher unless otherwise specified in the student's IEP. An in-class resource program shall be provided in the student's general education class at the same time as the rest of the class. A student receiving an in-class resource program or an in-class program of supplementary instruction shall be included in activities such as group discussion, special projects, field trips and other regular class activities as deemed appropriate in the student's IEP.
- (j) In a pull-out replacement resource program, the general education curriculum and the instructional strategies may be modified based on the student's IEP. The resource program teacher shall have primary instructional responsibility for the student in the replacement resource program and shall consult with the general classroom teacher as appropriate.

From 6A:14-4.7

- (a) A special class program shall serve students who have similar intensive educational, behavioral and other needs related to their disabilities in accordance with their individualized education programs. Placement in a special class program shall occur when the IEP team determines that the nature and severity of the student's disability is such that no other school-based program will meet the student's needs. Special class programs shall offer instruction in the core curriculum content standards unless the IEP specifies a modified curriculum due to the nature or severity of the student's disability. The regular education curriculum and the instructional strategies may be modified based on the student's IEP. Special class programs shall meet the following criteria:
 - 1. Depending on the disabilities of the students assigned to the special class program, the special class teacher shall hold certification as a teacher of students with disabilities, teacher of blind or partially sighted, and/or teacher possessing the appropriate teacher of the deaf or hard of hearing certificate;
 - 2. The age span in special class programs shall not exceed three years in elementary programs, and shall not exceed four years in secondary programs;
 - i. The provisions of this paragraph with respect to elementary programs shall become effective on July 1, 2007 for the 2007-2008 school year and beyond. For the 2006-2007 school year, the age range in elementary programs shall not exceed four years. However, school districts may, at their discretion, adhere to the provisions of this paragraph prior to July 1, 2007; and
 - 3. A kindergarten shall not be approved as a special class program.

- (b) Special class programs for students with auditory impairments shall be instructed by a teacher possessing the appropriate teacher of the deaf or hard of hearing certificate.
- (f) In addition to the requirements for instructional size for special class programs according to (e) above, instruction may be provided in the secondary setting of a class organized around a single content area consisting solely of students with disabilities instructed by a general education teacher where an adapted general education curriculum is used shall have a maximum instructional size of 12. The instructional size may be increased with the addition of a classroom aide up to 16 students.

From 6A:14 -4.8 (a) 3 & 4

- (a) A student with a disability shall have his or her IEP implemented through one to one instruction at home or in another appropriate setting when it can be documented that all other less restrictive program options have been considered and have been determined inappropriate.
 - 3. A written record of the student's home instruction, including dates and times during which home instruction is provided, shall be maintained, and the teacher providing instruction shall be appropriately certified as teacher of students with disabilities or for the subject or level in which the instruction is given.
 - 4. Instruction shall be provided for no fewer than 10 hours per week. The 10 hours of instruction per week shall be accomplished in no fewer than three visits by a certified teacher or teachers on at least three separate days.

District & Child Study Team Responsibilities

24. What is the district's responsibility to employ enough staff to provide educational and related services as indicated in NJAC 6A:14 and in students' IEPs?

From Section 6A:14 - 5.1(a)

- (a) Each district board of education, independently or through joint agreements, shall employ or contract with child study teams as set forth in N.J.A.C. 6A:14-3.1(b), speech correctionists or speech-language specialists and other school personnel in numbers sufficient to ensure provision of required programs and services pursuant to this chapter.
 - 1. Joint agreements for child study team services may be entered into with local education agencies including other local school districts, educational services commissions, jointure commissions and county special services school districts.
 - 2. A district board of education may supplement child study team services with additional teams through contracts or joint agreements.
 - 3. If a vacancy occurs on a child study team(s) because of an absence of a member or members of the team(s) for an identified period of time, the district may, for the duration of any such vacancy, contract with a clinic or agency, an individual or another district board of education for those services that were provided by the absent team member(s).

25. What is the district's requirement to employ unit members to perform child study team services?

From Section 6A:14 - 3.1(a), (b), and (c)

- (a) Child study team members, specialists in the area of disabilities, school personnel and parents as required by this subchapter shall be responsible for identification, evaluation, determination of eligibility, development and review of the individualized education program, and placement.
- (b) Child study team members shall include a school psychologist, a learning disabilities teacher-consultant and a school social worker. All child study team members shall be employees of a district board of education, have an identifiable, apportioned time commitment to the local school district and shall be available to provide all needed services during the hours students are in attendance.
 - 1. Each member of the child study team shall perform only those functions that are within the scope of their professional license (where applicable) and certification issued by the New Jersey Department of Education.
- (c) Specialists in the area of disability include, but are not be limited to, child study team members, as well as speech-language specialists, occupational therapists, physical therapists, audiologists, school nurses, advance practice nurses and physicians who are appropriately certified and/or licensed to carry out activities under this chapter. Where an educational certificate and a license are required to carry out activities under this chapter, the professional shall be appropriately certified and licensed.

26. Can a district contract with private clinics and agencies?

From Section 6A:14 - 5.1(c)

- (c) For the services listed below, district boards of education may contract with private clinics and agencies approved by the Department of Education, private professional practitioners who are certified and licensed according to State statutes and rules, and agencies or programs that are certified, approved or licensed by the Department of Human Services or by the Department of Health and Senior Services to provide counseling or mental health services. For the related services

listed in (c)1iii and v below, approved private schools for students with disabilities may contract with private clinics and agencies approved by the Department of Education, private professional practitioners who are certified and licensed according to State statutes and rules, and agencies or programs that are certified, approved or licensed by the Department of Human Services or by the Department of Health and Senior Services to provide counseling or mental health services. All instructional, child study team and related services personnel provided by approved clinics and agencies and private professional practitioners shall be fully certified. No instructional, child study team and related services personnel provided by approved clinics and agencies, or private professional practitioners, may, if a certification is required for the discipline under which they are providing services, provide services under this subsection if certified through the emergency certification process.

1. For public school students:
 - i. Independent child study team evaluations according to N.J.A.C. 6A:14-2.5;
 - ii. Child study team services to supplement existing local district services;
 - iii. Related services;
 - (1) Certified occupational therapy assistants and others employed in a supportive role to licensed and, where applicable, certified providers of related services, shall work under the supervision of an appropriately licensed and, where applicable, certified provider of such services.
 - (2) Physical therapy assistants shall work in the presence and under the supervision of a certified physical therapist.
 - (3) Specialists in behavior modification or other disciplines for which there is no license or certification shall hold, at a minimum, a bachelors degree in education, psychology or a related field from an accredited institute of higher education and shall work under the supervision of certified district board of education personnel;
 - iv. Home Instruction; and
 - v. Speech-language services provided by a speech-language specialist when a district or private school for students with disabilities is unable to hire sufficient staff to provide the service.

27. How long can a district wait after receiving a written request to decide whether or not a student needs to be evaluated? Who attends the meeting at which the decision is made?

From Section 6A:14-3.3(e)

- (e) When a preschool age or school age student is referred for an initial evaluation to determine eligibility for special education programs and services under this chapter, a meeting of the child study team, the parent and the regular education teacher of the student who is knowledgeable about the student's educational performance or, if there is no teacher of the student, a teacher who is knowledgeable about the district's programs, shall be convened within 20 calendar days (excluding school holidays, but not summer vacation) of receipt of the written request. This group shall determine whether an evaluation is warranted and, if warranted, shall determine the nature and scope of the evaluation, according to N.J.A.C. 6A:14-3.4(a). The team may also determine that an evaluation is not warranted and, if so, determine other appropriate action. The parent shall be provided written notice of the determination(s), which includes a request for consent to evaluate, if an evaluation will be conducted, according to N.J.A.C. 6A:14-2.3.

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28. How long does a district have to complete an initial evaluation?

From Section 6A:14 - 3.4(e)

- (e) After parental consent for initial evaluation of a preschool age or school age student has been received, the evaluation, determination of eligibility for services under this chapter, and, if eligible, development and implementation of the IEP for the student shall be completed within 90 calendar days.
1. If the parent repeatedly fails or refuses to produce the child for the evaluation, the time period above shall not apply.
 2. If a child enrolls in the school of a district board of education after an initial evaluation was undertaken by another district board of education, but before it was completed, and the district is making progress so as to ensure a prompt completion of the evaluation, and the district and parent agree to a specific modified timeframe for completing the evaluation, the agreed-upon timeframe for completing the evaluation shall be applied.
 3. If initial evaluation of a preschool age child is warranted, the district board of education shall take steps to ensure that consent to evaluate is obtained without delay.

29. How often must a district reevaluate a student with a disability?

From Section 6A:14 - 3.8(a)

- (a) Within three years of the previous classification, a multi-disciplinary reevaluation shall be completed to determine whether the student continues to be a student with a disability. Reevaluation shall be conducted sooner if conditions warrant or if the student's parent or teacher requests the reevaluation. However, a reevaluation shall not be conducted prior to the expiration of one year from the date the parent is provided written notice of the determination with respect to eligibility in the most recent evaluation or reevaluation, unless the parent and district both agree that a reevaluation prior to the expiration of one year as set forth above is warranted. When a reevaluation is conducted sooner than three years from the previous evaluation as set forth above, the reevaluation shall be completed in accordance with the timeframes in (e) below.
1. If a parent provides written consent and the district board of education agrees that a reevaluation is unnecessary, the reevaluation may be waived. If a reevaluation is waived, the date of the parent's written consent shall constitute the date upon which the next three-year period for conducting a reevaluation shall commence.

30. What is consent and when is parent consent required?

From Section 6A:14-1.3

"Consent" means agreement in writing that is required by this chapter. Consent shall be obtained from the parent having legal responsibility for educational decision making. The district board of education shall ensure that the parent:

1. Has been fully informed of all information relevant to the activity for which consent is being sought, in his or her native language or other mode of communication;
2. Understands and agrees in writing to the implementation of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom;
3. Understands that the granting of consent is voluntary and may be revoked at any time; and
4. If the parent revokes consent, that revocation is not retroactive (that is, it does not negate an action that has occurred after the consent was given and before the consent was revoked).

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From Section 6A:14-2.3

(a) Consent shall be obtained:

1. Prior to conducting any assessment as part of an initial evaluation;
2. Prior to implementation of the initial IEP resulting from (a)1 above;
3. Prior to conducting any assessment as part of a reevaluation, except that such consent is not required if the district board of education can demonstrate that it had taken reasonable measures, consistent with (k)7 below, to obtain such consent and the parent failed to respond;
4. Prior to the release of student records according to N.J.A.C. 6A:32;
5. Each time a district board of education seeks to access private insurance covering a student with a disability;
6. Prior to the first time a district board of education seeks to access a child's or parent's public benefits or insurance covering a student with a disability in accordance with 34 CFR 154(d);
7. Whenever a member of the IEP team is excused from participating in a meeting pursuant to (k) below;
8. Whenever an IEP is amended without a meeting pursuant to N.J.A.C. 6A:14-3.7(d); and
9. Whenever a parent and district board of education agree to waive a reevaluation pursuant to N.J.A.C. 6A:14-3.8(a).

From Section 6A:14-2.3(k)

- (k) Meetings to determine eligibility and develop an IEP shall, if feasible, be combined as long as the requirements for notice of a meeting according to (g)7ii above and (k)3 through 5 below are met.
9. For a member of the IEP team whose area of the curriculum or related services is not being modified or discussed, such IEP team member may be excused from participation in the meeting, in whole or in part, provided the parent and district board of education agree that the IEP team member need not attend the meeting and the parent consents to such excusal in writing.
 - i. All requests for consent for excusal of an IEP team member shall be included with the notice of the meeting date and participants to ensure sufficient time for the parent to review and consider the request.
 10. For a member of the IEP team whose area of the curriculum or related services is being modified or discussed, such IEP team member may be excused from participation in the meeting, in whole or in part, provided the parent and district board of education agree that the IEP team member need not attend the meeting and the parent consents to such excusal in writing.
 - i. If there is a request to excuse a team member from the meeting, such member shall provide written input with respect to their area of the curriculum or related services. The written input shall be provided to the parent with the notice of the IEP meeting date and participants to ensure sufficient time for the parent to review and consider the request.
 - ii. All requests for consent for excusal of IEP team member shall be included with the notice of the meeting date and participants to ensure sufficient time for the parent to review and consider the request.

From Section 6A:14-3.7(d)2

- (d) The IEP may be amended without a meeting of the IEP team as follows:
2. The school district provides the parent a written proposal to amend a provision or provisions of the IEP and, within 15 days from the date the written proposal is provided to the parent, the parent consents in writing to the proposed amendment;

From Section 6A:14-3.8(a)1

1. If a parent provides written consent and the district board of education agrees that a reevaluation is unnecessary, the reevaluation may be waived. If a reevaluation is waived, the date of the parent's written consent shall constitute the date upon which the next three-year period for conducting a reevaluation shall commence.

31. What can the district do if the parent refuses to give consent?

From Section 6A:14-2.3(e)

- (e) Written consent may be revoked by the parent, in writing, at any time. 1. Revocation of consent shall not be retroactive, and such revocation shall not negate any action that occurred after consent was provided and before consent was revoked.
1. If consent for services is revoked by the parent, the district board of education may file for a due process hearing or otherwise institute any legal proceeding seeking to overturn the parent's determination.

From Section 6A:14-2.3(c)

- (c) When a parent refuses to provide consent for implementation of the initial IEP, no IEP shall be finalized and the district board of education may not seek to compel consent through a due process hearing. However, if a parent refuses special education and related services on behalf of a student, the district board of education shall not be determined to have denied the student a free, appropriate public education because the student failed to receive necessary special education and related services nor shall the district board of education be determined in violation of its child-find obligation solely because it failed to provide special education or related services to a student whose parents refused to provide consent for implementation of the initial IEP. For those areas set forth in N.J.A.C. 6A:14-2.3(a)1, 3 and 4, if a parent refuses to provide consent and the district and the parent have not agreed to other action, the district may request a due process hearing according to N.J.A.C. 6A:14-2.7(b) to obtain consent.

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- (b) In addition to the issues specified in (a) above, the district board of education or public agency responsible for the development of the student's IEP may request a due process hearing when it is unable to obtain required consent to conduct an initial evaluation or a reevaluation, or to release student records. The district board of education shall request a due process hearing when it denies a written parental request for an independent evaluation in accordance with N.J.A.C. 6A:14-2.5(c).

32. Must a district schedule time for consultation between a resource program teacher and the general education teaching staff?

From Section 6A:14 - 4.6(g)

- (g) A teacher of supplementary instruction and a resource program teacher shall be provided time on a regular basis for consultation with appropriate general education teaching staff.

33. What is the district's responsibility to train staff?

From Section 6A:14 - 1.2(b)14

- (b) Each district board of education shall have policies, procedures and programs approved by the Department of Education through the county office of education that are in effect to ensure the following:
 - 14. The in-service training needs for professional and paraprofessional staff who provide special education, general education or related services are identified and that appropriate in-service training is provided.
 - 1. The district board of education shall maintain information to demonstrate its efforts to
 - (1) Prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities.
 - (2) Enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of students with disabilities that impedes the learning of students with disabilities and others;
 - (3) Acquire and disseminate to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources and how the district will, if appropriate, adopt promising practices, materials and technology;
 - (4) Insure that the in-service training is integrated to the maximum extent possible with other professional development activities; and,
 - (5) Provide for joint training activities of parents and special education, related services and general education personnel.

34. What are districts' transportation requirements?

From Section 6A:14 - 3.9(a)7

- (a) Related services including, but not limited to, counseling, occupational therapy, physical therapy, school nurse services, recreation, social work services, medical services and speech-language services shall be provided to a student with a disability when required for the student to benefit from the educational program. Related services shall be provided by appropriately certified and/or licensed professionals as specified in the student's IEP and according to the following:
 - 7. Transportation shall be provided in accordance with 6A:27-5.

From Section 6A:27 - 5.1(a)

- (a) Students with special needs shall be provided with transportation in accordance with N.J.S.A. 18A:39-1 et seq. and in accordance with their Individualized Education Program (IEP).
 - 1. The district board of education shall provide transportation as required in the IEP. Such services may include, but are not limited to, special transportation equipment, transportation aides and special arrangements for other assistance to and from the school

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3. When an out-of-district placement for educational reasons is made by a resident district board of education, transportation shall be provided consistent with the school calendar of the receiving school. A copy of the school calendar shall be submitted to the resident school district by May 15 preceding the year in which transportation is required, or at the time of placement if it occurs after May 15.
4. When necessary, the student's case manager shall provide the transportation coordinator and the bus driver with specific information including safety concerns, mode of communication, and health and behavioral characteristics of a student for whom transportation services are to be provided.
5. Students with disabilities below the age of five shall be transported in vehicles equipped with safety belts or other child restraint systems.

35. Who is responsible to provide programs and related services indicated in the IEP?

From Section 6A:14 - 4.1(a)

- (a) Each district board of education shall provide educational programs and related services for students with disabilities required by the individualized education programs of those students for whom the district board of education is responsible.

36. What can be done if the district does not implement the regulations appropriately?

From Section 6A:14 - 9.2(b)

- (b) An organization or individual may request a complaint investigation by simultaneously submitting a written signed request to the State Director of the Office of Special Education Programs and to the educational agency against which the complaint is directed. The complaint shall include:
 1. A statement that a public or private education agency has violated the requirements of State and/or Federal statute and/or regulation for the provision of special education and related services;
 2. The facts on which the statement is based; and
 3. The time period when the alleged violation occurred.
 - i. The complainant shall allege a violation that occurred not more than one year prior to the date that the complaint is received.

37. Who conducts the evaluation of a pupil?

From Section 6A:14 - 2.5(b)6.

- (b) Each district board of education shall ensure:
 6. The evaluation is conducted by a multi-disciplinary team of professionals consisting of a minimum of two members of the child study team, and, where appropriate, other specialists who shall conduct the evaluation in accordance with the procedures in N.J.A.C. 6A:14-3. A minimum of one evaluator shall be knowledgeable in the area of the suspected disability.

From Section 6A:14 - 3.4(a)3.

- (a) The child study team, the parent and the regular education teacher of the student who has knowledge of the student's educational performance or if there is no teacher of the student, a teacher who is knowledgeable about the district's programs shall:
 - 3. Determine which child study team members and/or specialists shall conduct each assessment that is part of the evaluation.

38. What services may the CST provide to general education staff?

From Section 6A:14-3.1(d)3, 5 & 6

- (d) Child study team members and, to the extent appropriate, specialists in the area of disability:
 - 3. May provide services to the educational staff with regard to techniques, materials and programs. Services include, but are not limited to, the following:
 - i. Consultation with school staff and parents;
 - ii. Training of school staff; and
 - iii. The design, implementation and evaluation of techniques addressing academic and behavioral difficulties.
 - 5. May provide preventive and support services to nondisabled students; and
 - 6. May participate on Intervention and Referral Services teams pursuant to N.J.A.C. 6A:16-8.

Curriculum/Assessment/Transition/Graduation

39. What are the core curriculum requirements for students with disabilities?

From Section 6A:14 - 3.7(e)2 and 3

2. Where appropriate, a statement of detailed measurable annual academic and functional goals that shall, as appropriate, be related to the core curriculum content standards through the general education curriculum unless otherwise required according to the student's educational needs, or appropriate, student specific, functional needs. For all students, the annual academic and functional goals shall be measurable and apprise parents and educational personnel providing special education and related services to the student of the expected level of achievement attendant to each goal.
3. Such measurable annual goals shall include benchmarks or short-term objectives related to:
 - i. Meeting the student's needs that result from the student's disability to enable the student to be involved in and progress in the general education curriculum; and
 - ii. Meeting each of the student's other educational needs that result from the student's disability.

40. What are the statewide assessment requirements for students with disabilities?

From Section 6A:14 - 4.10(a)

- (a) Students with disabilities shall participate in the Statewide assessment system according to the following:
 1. Except as provided in (a) 2 below, students with disabilities shall participate in each content area of the general Statewide assessment for their grade. Accommodations and modifications approved by the Department of Education shall be provided when determined necessary by the IEP team to students with disabilities who participate in the general Statewide assessments.
 2. Students with disabilities shall participate in the Alternate Proficiency Assessment (APA) in each content area where the nature of the student's disability is so severe that the student is not receiving instruction in any of the knowledge and skills measured by the general Statewide assessment and the student cannot complete any of the types of questions on the assessment in the content area(s) even with accommodations and modifications.
 3. Following the 11th grade, students with disabilities who are required to pass the HSPA for graduation and have not done so shall participate in the SRA in accordance with N.J.A.C. 6A:8. If a student is participating in the SRA as determined by the IEP team, the student shall not be required to again participate in the HSPA and pass that assessment.

41. What are the graduation requirements for students with disabilities?

From Section 6A:14 - 3.7(e)9

- (e) With the exception of an IEP for a student classified as eligible for speech-language services, the IEP shall include but not be limited to:
 9. Beginning at age 14, a statement of the State and local graduation requirements that the student shall be expected to meet. The statement shall be reviewed annually. If a student with a disability is exempted from, or there is a modification to, local or State high school

graduation requirements, the statement shall include:

- i. A rationale for the exemption or modification based on the student's educational needs which shall be consistent with N.J.A.C. 6A:14-4.11; and
- ii. A description of the alternate proficiencies to be achieved by the student to qualify for a State endorsed diploma.

From Section 6A:14 - 4.11(a)

- (a) The IEP of a student with a disability who enters a high school program shall specifically address the graduation requirements. The student shall meet the high school graduation requirements according to N.J.A.C. 6A:8-5.1(c), except as specified in the student's IEP. The IEP shall specify which requirements would qualify the student with a disability for the State endorsed diploma issued by the school district responsible for his or her education.

42. What are a district's transition responsibilities?

From Section 6A:14-3.7(e) 10 - 13

- (e) With the exception of an IEP for a student classified as eligible for speech-language services, the IEP shall include, but not be limited to:
 10. A statement of student's transition from an elementary program to the secondary program which shall be determined by factors including number of years in school; social, academic and vocational development; and chronological age;
 11. Beginning with the IEP in place for the school year when the student will turn age 14, or younger if determined appropriate by the IEP team, and updated annually:
 - i. A statement of the student's strengths, interests and preferences;
 - ii. Identification of a course of study and related strategies and/or activities that:
 - (1) Are consistent with the student's strengths, interests, and preferences; and
 - (2) Are intended to assist the student in developing or attaining postsecondary goals related to training, education, employment and, if appropriate, independent living;
 - iii. As appropriate, a description of the need for consultation from other agencies that provide services for individuals with disabilities including, but not limited to, the Division of Vocational Rehabilitation Services in the Department of Labor and Workforce Development; and
 - iv. As appropriate, a statement of any needed interagency linkages and responsibilities;
 12. Beginning with the IEP in place for the school year when the student will turn age 16, or younger if deemed appropriate by the IEP team, a statement consisting of those elements set forth in (e)11 above and appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and, if appropriate, independent living and the transition services including a course of study needed to assist the child in reaching those goals.
 - i. The transition services as defined in IDEA shall consist of a coordinated set of activities for a student with a disability that is designed within a results-oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation, and be based on the individual student's needs, taking into account the student's strengths, preferences and interests. In

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addition to the above, transition services shall include:

- (1) Instruction;
 - (2) Related services;
 - (3) Community experiences;
 - (4) The development of employment and other post-school adult living objectives; and
 - (5) If appropriate, acquisition of daily living skills and functional vocational evaluation;
13. The person(s) responsible to serve as a liaison to postsecondary resources and make referrals to the resources as appropriate. If the student with disabilities does not attend the IEP meeting where transition services are discussed, the district board of education or public agency shall take other steps to ensure that the student's preferences and interests are considered.

Behavior/Discipline

43. What behavior requirements must be considered when developing the IEP?

From Section 6A:14 - 3.7(c)4

(c) When developing the IEP, the IEP team shall:

4. In the case of a student whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions and supports to address that behavior.

44. What is the district's educational responsibility to a student with a disability who has been suspended or expelled?

From Section 6A:14-1.1(b)1

(b) The purpose of this chapter is to:

1. Ensure that all students with disabilities as defined in this chapter, including students with disabilities who have been suspended or expelled from school, have available to them a free, appropriate public education as that standard is set under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400 et seq.);

45. Can a student with a disability be suspended?

From Section 6A:14-2.8(a)

(a) For disciplinary reasons, school officials may order the removal of a student with a disability from his or her current educational placement to an interim alternative educational setting, another setting, or a suspension for up to 10 consecutive or cumulative school days in a school year. Such suspensions are subject to the same district board of education procedures as nondisabled students. However, at the time of removal, the principal shall forward written notification and a description of the reasons for such action to the case manager and the student's parent(s).

1. Notwithstanding (a) above, preschool students with disabilities shall not be suspended, long-term or short-term, and shall not be expelled.
2. The district board of education is not required by 20 U.S.C. §§1400 et seq. or this chapter to provide services during periods of removal to a student with a disability who has been removed from his or her current placement for 10 school days or less in that school year, provided that if services are provided to general education students for removals of 10 or fewer days duration, students with disabilities shall be provided services in the same manner as students without disabilities during such time periods for removals of 10 or fewer days.

46. When does the removal of a student with a disability for disciplinary reasons constitute a change in placement?

From Section 6A:14-2.8(b), 6A:14-2.8(c):14-2.8(e)

(b) School district personnel may, on a case-by-case basis, consider any unique circumstances when determining whether or not to impose a disciplinary sanction or order a change of placement for a student with a disability who violates a school code of conduct.

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- (c) Removals of a student with a disability from the student's current educational placement for disciplinary reasons constitute a change in placement if:
 - 1. The removal is for more than 10 consecutive school days; or
 - 2. The student is subjected to a series of short-term removals that constitute a pattern because they cumulate to more than 10 school days in a school year and because of factors such as the length of each removal, the total amount of time the student is removed and the proximity of the removals to one another.
 - i. School officials in consultation with the student's case manager shall determine whether a series of short-term removals constitutes a pattern that creates a change of placement.
- (e) In the case of a student with a disability who has been removed from his or her current placement for more than 10 cumulative or consecutive school days in the school year, the district board of education shall provide services to the extent necessary to enable the student to progress appropriately in the general education curriculum and advance appropriately toward achieving the goals set out in the student's IEP.
 - 1. When it is determined that a series of short-term removals is not a change of placement, school officials, in consultation with the student's special education teacher and case manager shall determine the extent to which services are necessary to enable the student to progress appropriately in the general curriculum and advance appropriately toward achieving the goals set out in the student's IEP.
 - 2. When a removal constitutes a change of placement, and it is determined that the behavior is not a manifestation of the student's disability, the student's IEP team shall determine the extent to which services are necessary to enable the student to progress appropriately in the general curriculum and advance appropriately toward achieving the goals set out in the student's IEP.

47. Can a student with a disability be suspended for more than 10 school days?

From Section 6A:14-2.8(d)

- (d) Disciplinary action initiated by a district board of education which involves removal to an interim alternative educational setting, suspension for more than 10 school days in a school year or expulsion of a student with a disability shall be in accordance with 20 U.S.C. § 1415(k), as amended and supplemented. (See chapter Appendix A.) However, the period of removal to an interim alternative educational setting of a student with a disability in accordance with 20 U.S.C. § 1415(k) shall be for a period of no more than 45 calendar days.

48. What services must be provided to a student with a disability who is suspended for more than 10 days?

From Section 6A:14-2.8 (e)

- (e) In the case of a student with a disability who has been removed from his or her current placement for more than 10 cumulative or consecutive school days in the school year, the district board of education shall provide services to the extent necessary to enable the student to progress appropriately in the general education curriculum and advance appropriately toward achieving the goals set out in the student's IEP.

49. What if the student's disciplinary problem constitutes a change in placement but is not a manifestation of his/her disability?

From Section 6A:14-2.8(e)2

2. When a removal constitutes a change in placement, and it is determined that the behavior is not a manifestation of the student's disability, the student's IEP team shall determine the extent to which services are necessary to enable the student to progress appropriately in the general curriculum and advance appropriately toward achieving the goals set out in the student's IEP.

50. What happens when the removal is for drug or weapon offenses?

From Section 6A:14-2.8(f)

- (f) In the case of a removal for drug or weapons offenses, or because the student caused a serious bodily injury under 20 U.S.C. §1415(k) and its implementing regulations at 34 CFR §§ 300.1 et seq., or a removal by an administrative law judge for dangerousness consistent with 20 U.S.C. §1415(k) and its implementing regulations at 34 CFR §§ 300.1 et seq., the district board of education shall provide services to the student with a disability consistent with 20 U.S.C. §1415(k) and its implementing regulations at 34 CFR §§ 300.1 et seq., incorporated herein by reference. However, the period of removal to an interim alternative educational setting of a student with a disability in accordance with 20 U.S.C. §1415(k) shall be for a period of no more than 45 calendar days. Note: The New Jersey Department of Education has attached U.S.C. §1415(k) as an appendix to the Regulations on Special Education. The United States Department of Education has issued regulations to the Individuals with Disabilities Education Act. They have prepared a user-friendly package designed to help parents, teachers and school administrators understand the federal expectations for educating children with disabilities, as set forth in the law.

Definitions & Program Parameters

51. Who is covered under the definition “other health impaired?”

From Section 6A:14 - 3.5(c)9

9. “Other health impaired” corresponds to “chronically ill” and means a disability characterized by having limited strength, vitality or alertness, including a heightened alertness with respect to the educational environment, due to chronic or acute health problems, such as attention deficit disorder or attention deficit hyperactivity disorder, a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes or any other medical condition, such as Tourette Syndrome, that adversely affects a student’s educational performance. A medical assessment documenting the health problem is required.

52. What are related services?

From Section 34 U.S.C. § 300.34 - IDEA

- (a) General. Related Services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

From 6A:14 - 3.9(a)

- (a) Related services including, but not limited to, counseling, occupational therapy, physical therapy, school nurse services, recreation, social work services, medical services and speech-language services shall be provided to a student with a disability when required for the student to benefit from the educational program. Related services shall be provided by appropriately certified and/or licensed professionals as specified in the student’s IEP and according to the following
 1. Counseling services that are provided by school district personnel shall be provided by certified school psychologists, social workers or guidance counselors.
 2. Counseling and/or training services for parents shall be provided to assist them in understanding the special educational needs of their child.
 3. Speech and language services may be provided as a related service to a student who is classified as “eligible for special education and related services.” Assessment by a speech-language specialist is required. The student shall meet the eligibility criteria for the classification of “eligible for speech-language services” but shall not be classified as such.
 4. Occupational therapy and physical therapy may be provided by therapy assistants under the direction of the certified and, where required, licensed therapist in accordance with all applicable State statutes and rules.
 - i. Prior to the provision of occupational therapy, assessment by a certified (and, where required, licensed) occupational therapist and development of an IEP are required.
 - ii. Prior to the provision of physical therapy, assessment by a certified and licensed physical therapist and development of an IEP are required.
 5. A district board of education or approved private school for students with disabilities may contract for the provision of speech-language services, counseling services, occupational

- therapy, and/or physical therapy in accordance with N.J.A.C. 6A:14-5.
6. Recreation shall be provided by certified school personnel.
 7. Transportation shall be provided in accordance with N.J.A.C. 6A:27-5.
 8. Nursing services shall be provided as a related service only to the extent such services are designed to enable a child with a disability to receive a free, appropriate public education as described in the individualized education program of the child.
 9. Medical services shall be provided as a related service for diagnostic and evaluation purposes only.
 10. Therapy services may be integrated into the context of ongoing activities or routines and provided by personnel as set forth in the student's IEP.
 11. When related services are provided by non-certified personnel because there is no certification required, such services shall be provided under the supervision of certified district board of education personnel.
 12. Other related services shall be provided as specified in the student's IEP.

53. What is "assistive technology"?

From Section 34 U.S.C. § 300.5 and 34 U.S.C. § 300.6 - IDEA

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device. "Assistive technology service" means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device.

From Section 6A:14-1.3

"Assistive technology device" is defined in accordance with the definition of the term set forth in IDEA and its implementing regulations at 34 C.F.R. §§300.1 et seq., as amended and supplemented, incorporated by reference herein and reproduced at chapter Appendix F.

"Assistive technology service" is defined in accordance with the definition of the term set forth in IDEA and its implementing regulations at 34 C.F.R. §§300.1 et seq., as amended and supplemented, incorporated by reference herein and reproduced at chapter Appendix G.

54. How are modifications and related services determined?

From Section 6A:14 - 3.4(a)

- (a) The child study team, the parent and the regular education teacher of the student who has knowledge of the student's educational performance or if there is no teacher of the student, a teacher who is knowledgeable about the district's programs shall:
 1. Review existing evaluation data on the student including evaluations and information provided by the parents, current classroom-based assessments and observations, and the observations of teachers and related services providers and consider the need for any health appraisal or specialized medical evaluation;
 2. On the basis of the review in (a)1 above identify what additional data, if any are needed to determine:
 - i. Whether the student has a disability under this chapter;

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- ii. The present levels of academic and functional achievement and related developmental needs, and educational needs of the student;
- iii. Whether the student needs special education and related services.

From Section 6A:14-3.7 (a), (b), (e)

- (a) A meeting to develop the IEP shall be held within 30 calendar days of a determination that a student is eligible for special education and related services or eligible for speech-language services. An IEP shall be in effect before special education and related services are provided to a student with a disability and such IEP shall be implemented as soon as possible following the IEP meeting.
- (b) The IEP shall be developed by the IEP team according to N.J.A.C. 6A:14- 2.3(k)2 for students classified eligible for special education and related services or according to N.J.A.C. 6A:14-3.6(d) for students classified eligible for speech-language services.
- (e) With the exception of an IEP for a student classified as eligible for speech-language services, the IEP shall include, but not be limited to:
 4. A statement of the special education and related services and supplementary aids and services that shall be provided for the student, or on behalf of the student. Such special education and related services and supplementary aides and services shall be based, to the extent practicable, on peer reviewed research. A statement of the program modifications or supports for school personnel that shall be provided for the student:
 - i. To advance appropriately toward attaining the measurable annual academic and functional goals;
 - ii. To be involved and progress in the general education curriculum according to (e)1 above and to participate in extracurricular and other nonacademic activities; and
 - iii. To be educated and participate with other students with disabilities and nondisabled students;
 5. A statement, as appropriate, of any integrated therapy services to be provided addressing the student's individualized needs in his or her educational setting.
 7. A statement of any individual modifications in the administration of Statewide or districtwide assessments of student achievement needed for the student to participate in such assessment.
 - i. If the IEP team determines that the student shall not participate in a particular general Statewide or districtwide assessment of student achievement (or part of such an assessment), a statement of why that assessment is not appropriate for the student according to N.J.A.C. 6A:14-4.10 and a statement of how that student shall be assessed and which assessment methodology is appropriate for the student.

55. When is an extended school year provided?

From Section 6A:14 - 4.3(c)

- (c) The IEP team shall make an individual determination regarding the need for an extended school year program. An extended school year program provides for the extension of special education and related services beyond the regular school year. An extended school year program is provided in accordance with the student's IEP when an interruption in educational programming causes the student's performance to revert to a lower level of functioning and recoupment cannot be expected in a reasonable length of time. The IEP team shall consider all relevant factors in determining the need for an extended school year program.
 1. The district board of education shall not limit extended school year services to particular categories of disability or limit the type, amount, or duration of those services.

Placement & Least Restrictive Environment

56. When is placement in the students' general education class not appropriate?

From Section 6A:14 - 4.2(a)

- (a) Students with disabilities shall be educated in the least restrictive environment. Each district board of education shall ensure that:
1. To the maximum extent appropriate, a student with a disability is educated with children who are not disabled;
 2. Special classes, separate schooling or other removal of a student with a disability from the student's general education class occurs only when the nature or severity of the educational disability is such that education in the student's general class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily;
 3. A full continuum of alternative placements according to N.J.A.C. 6A:14-4.3 is available to meet the needs of students with disabilities for special education and related services;

57. What are the considerations for placement in the least restrictive environment?

From Section 6A:14 - 4.2(a)

- (a) Students with disabilities shall be educated in the least restrictive environment. Each district board of education shall ensure that:
8. Consideration is given to:
 - i. Whether the student can be educated satisfactorily in a regular classroom with supplementary aids and services;
 - ii. A comparison of the benefits provided in a regular class and the benefits provided in a special education class; and
 - iii. The potentially beneficial or harmful effects which a placement may have on the student with disabilities or the other students in the class.

58. What is the full continuum of alternative placements?

From Section 6A:14-4.3(a) & (b)

- (a) All students shall be considered for placement in the general education class with supplementary aids and services including, but not limited to, the following:
1. Curricular or instructional modifications or specialized instructional strategies;
 2. Assistive technology devices and services as defined in N.J.A.C. 6A:14-1.3;
 3. Teacher aides;
 4. Related services;
 5. Integrated therapies;
 6. Consultation services; and
 7. In-class resource programs.
- (b) If it is determined that a student with a disability cannot remain in the general education setting with supplementary aids and services for all or a portion of the school day, a full continuum of alternative placements as set forth below shall be available to meet the needs of the student.

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Alternative educational program options include placement in the following:

1. Single subject resource programs outside the general education class;
2. A special class program in the student's local school district;
3. A special education program in another local school district;
4. A special education program in a vocational and technical school;
5. A special education program in the following settings:
 - i. A county special services school district;
 - ii. An educational services commission;
 - iii. A jointure commission; and
 - iv. A New Jersey approved private school for students with disabilities or an out-of-State school for students with disabilities in the continental United States approved by the department of education in the state where the school is located;
6. A program operated by a department of New Jersey State government;
7. A community rehabilitation program;
8. A program in a hospital, convalescent center or other medical institution;
9. Individual instruction at home or in other appropriate facilities, with the prior written notice to the Department of Education through its county office;
10. An accredited nonpublic school which is not specifically approved for the education of students with disabilities according to N.J.A.C. 6A:14-6.5;
11. Instruction in other appropriate settings according to N.J.A.C. 6A:14-1.1(d); and
12. An early intervention program (which is under contract with the Department of Health and Senior Services) in which the child has been enrolled for the balance of the school year in which the child turns age three.

Exceptions

59. When can the requirement to provide pre-referral interventions be waived?

From Section 6A:14 - 3.3(d)

- (d) A direct referral to the child study team may be made when it can be documented that the nature of the student's educational problem(s) is such that evaluation to determine eligibility for special education services under this chapter is warranted without delay.
1. The parent may make a written request for an evaluation to determine eligibility for services under this chapter. Such a request shall be considered a referral and shall be forwarded without delay to the child study team for consideration.

60. How does a district obtain an exception to age range and/or class size?

From Section 6A:14 - 4.9(a)

- (a) Exceptions for the age range and group sizes specified in N.J.A.C. 6A:14-4.4 through 4.7 shall be granted
1. On an individual basis;
 2. Only with prior written approval of the Department of Education through its county office; and
 3. For a period not to exceed the balance of the school year.

61. Does the district have to inform the other parents if a waiver has been granted that increases class size or age range?

From Section 6A:14-4.9(d) & (e)

- (d) The parent of a student with a disability, for whom the exception is requested, and the parents of the students who are affected by the request for an exception shall be informed by the district board of education that such a request is being submitted to the county office of education.
- (e) Upon approval of the exception by the county office, the district board of education or the appropriate education agency shall inform the parents of the students with disabilities who are affected by the exception.

62. Where is the regulation eliminating waivers and equivalencies?

From Section 6A:14 - 4.9(f)

- (f) As of July 6, 1998, no waivers or equivalencies pursuant to N.J.A.C. 6:3A shall be granted to this chapter.

Class & Program Size Requirements

63. What is the maximum class size for speech/language service?

From Section 6A:14 - 4.4(a)

- (a) Speech-language services provided to a student with a disability shall be in addition to the regular instructional program and shall meet the following criteria:
 - 1. Speech-language services shall be given individually or in groups.
 - i. The size and composition of the group shall be determined by the IEP team in accordance with the speech-language needs of the student(s) with educational disabilities and shall not exceed five students.

64. What is the class size for special class programs? When is a teaching assistant required?

From 6A:14-4.7(e), (f), (g), & (h)

- (e) Instructional group sizes for preschool, elementary and secondary special class programs shall not exceed the limits listed below. The instructional group size may be increased with the addition of a classroom aide according to the numbers listed in Column III as set forth below. When determining whether a classroom aide is required, students with a personal aide shall not be included in the student count:
- (f) Secondary special class programs are defined as programs which are located in schools in which there is any combination of grades six through 12 and where the organizational structure is departmentalized for general education students.
- (g) In addition to the requirements for instructional size for special class programs according to (e) above, instruction may be provided in the secondary setting of a class organized around a single content area consisting solely of students with disabilities instructed by a general education teacher where an adapted general education curriculum is used shall have a maximum instructional size of 12. The instructional size may be increased with the addition of a classroom aide up to 16 students.
- (h) Vocational education programs shall meet the following criteria:
 - 2. In vocational shop and related academic programs, class sizes shall be as follows:
 - i. For a class consisting of students with disabilities, the maximum class size with an aide shall not exceed 15. Class size shall not exceed 10 without the addition of an aide unless prior written approval of the Department of Education through its county office is granted according to N.J.A.C. 6A:14-4.9. Requests for approval of a class size which exceeds 10 without an aide shall include, but not be limited to, a description of the following student needs and instructional considerations:
 - (1) The nature and degree of the student's educationally disabling condition;
 - (2) The interests, aptitudes and abilities of the student;
 - (3) The functional level of the student;
 - (4) The employment potential of the student;
 - (5) The type of occupational area;
 - (6) Instructional strategies;
 - (7) Safety factors; and
 - (8) Physical facility requirements.

Where in the Special Education Regulations

I - Program	II - Instructional Size <i>no classroom aide required</i>	III - Instructional Size <i>classroom aide required</i>
<i>Auditory Impairments</i>	8	9 to 12
<i>Autism¹</i>	3	4 to 6 7 to 9 <i>(2 aides required Secondary ONLY)</i>
<i>Behavioral Disabilities</i>	9	10 to 12
<i>Cognitive²</i>		
<i>Mild</i>	12	13 to 16
<i>Moderate</i>	10	11 to 13
<i>Severe</i>	3	4 to 6 7 to 9 <i>(2 aides required)</i>
<i>Learning and/or Language Disabilities</i>		
<i>Mild to Moderate</i>	10	11 to 16
<i>Severe</i>	8	9 to 12
<i>Multiple Disabilities</i>	8	9 to 12
<i>Preschool Disabilities³</i>	---	1 to 8 9 to 12 <i>(2 aides required)</i>
<i>Visual Impairments</i>	8	9 to 12

- ¹ A program for students with autism shall maintain a student to staff ratio of three to one. For a secondary program, two classroom aides are required when the class size exceeds six students.
- ² A program for students with severe to profound cognitive disabilities shall maintain a three to one student to staff ratio.
- ³ A classroom aide is required for preschool classroom. Two aides are required when class size exceeds eight students.

65. What is the class size for supplemental instruction and resource programs? When is a teaching assistant required?

From 6A:14-4.6(m), (n), (o), & (p)

- (m) Group sizes for supplementary instruction and resource programs shall not exceed the limits listed below. Group size may be increased with the addition of an instructional aide, except where noted, according to the following:
- (n) The maximum number of students with disabilities that shall receive an in-class resource program shall be eight at the preschool or elementary level, and ten at the secondary level. The option to increase the group size of an in-class program of supplementary instruction in accordance with N.J.A.C. 6A:14-4.9 shall be prohibited.
- (o) Pull-out support and pull-out replacement resource programs shall not be provided at the same time by the same teacher. The group size of a pull-out replacement resource program may be accordance with N.J.A.C. 6A:14-4.9. The option to increase the group size for multiple subject supplementary instruction according to N.J.A.C. 6A:14-4.9 shall be prohibited.
- (p) Secondary programs shall be in schools in which any combination of grades six through 12 are contained and where the organizational structure is departmentalized for general education students.

Support Resource & Supplementary Instruction	Preschool/Elementary		Secondary	
	No Aide	Aide Required	No Aide	Aide Required
<i>In-Class</i>	8	-	10	-
<i>Pull-out Support & Supplemental Instruction</i>				
<i>Single Subject</i>	6	7 to 9	9	10 to 12
<i>Multiple Subject</i>	6	7 to 9	6	7 to 9
<i>Replacement Resource</i>				
<i>Pull-out Single Subject</i>	6	7 to 9	9	10 to 12

47x

New Jersey Education Association

180 West State Street, PO Box 1211
Trenton New Jersey 08607-1211

3017 - 12/15

Testimony to the NJ Joint Committee on Public Education: Special Education

March 22, 2017

Jorden Schiff, Ed.D.,

Superintendent of Schools, Hillsborough Township, NJ 08844

I would like to begin by thanking the Leadership and Members of the Committee for inviting our comments on special education. My name is Jorden Schiff and I am the proud superintendent of the Hillsborough Township Public Schools. In addition to serving as the Hillsborough Superintendent, I am also President of the Garden State Coalition of Schools, as well as the Chair of the NJASA Legislative Committee.

Special education is near and dear to my heart. I began my career close to 25 years ago teaching emotionally disturbed middle school boys at a residential facility in central Jersey. I still remember working with these terrific young men who needed structure, predictability, and the knowledge that a caring adult was always available to them. It was those experience almost a quarter a century ago that forged my commitment to spending my professional life educating children. My passion and commitment to special needs students cannot dull the fact that New Jersey public schools are at a crossroad. Due to shrinking revenue and increase costs superintendents across the state are faced with a dire reality of funding mandated programs at the expense of non-mandated program. Special education costs consistently rise about the 2% property tax cap, and as a result, special education needs are reducing investments in other areas of public school budgets. This is not a matter of philosophy or priorities. It is a matter of simple arithmetic. When revenues are capped and costs in mandated areas exceed the cap, then programs and personnel will need to be reduced in other areas of the budget. New Jersey has never been a state where we educate one group of children at the expense of another. We have always been a state that educates ALL CHILDREN, regardless of ability or disability.

We at the Garden State Coalition of Schools wish to not only identify a problem, but also offer possible solutions. We have three solutions that will provide a sustainable pathway to protect the quality of the educational experience for ALL STUDENTS in New Jersey public schools:

- **Return Greater Control and Decision-Making to Local School Boards**
Local school board members are publicly elected or appointed officials who represent and live in the communities they serve. They are the best people to determine taxation policy that balance the needs of the students with the community's ability to pay. Each township, borough, village, and city is unique and has its own complexity and needs. Broad-brushing a one-size-fits-all policy from Trenton, fails to recognize and appreciate each community's unique situation. Policy-makers in Trenton are not held accountable in the same way that a local school board is held to account by their community. Special education costs outside of a board's control that extend beyond the 2% property tax cap should be part of an automatic adjustment process as is done currently with the healthcare adjustment.
- **Recognize Educational Services Commissions (ESC) as an Alternative to Expensive Out-of-District Placements for Special Needs Children** (see Chart 1)
Part of the mission of all the Educational Services Commissions throughout the state is to provide special services that are not available in local districts. Similar services are provided by private schools at a greater cost. It is important that equivalent services are provided in an effective and efficient manner. The attached document illustrates potential cost savings while providing equivalent services for our out-of-district special needs students.
- **Explore the Ability to Require Related Services Expenses for Special Needs Children to be Claimed Against the Parents' Private Insurance Carrier and Have the School District Fund Any Out-of-Pocket Expenses**
Currently, students who qualify for Medicaid and receive certain special education services qualify for a program (SEMI) that reimburses the local school district for specific special services. Similar to the SEMI program, parents of students with special needs should be required to submit a claim to their private insurance carrier for services that are covered within their private plans. The school district would then cover any out-of-pocket expenses. Protections would need to be put in place to make certain that insurance carriers do not increase premiums for the parents of special needs children.

In closing, I would like to thank the committee members for listening and giving serious consideration to our testimony.

2016-2017 Tuition Rates- SCESC vs. Private Schools for Students with Disabilities

*Based on Private Schools for Students with Disabilities Tentative Tuition Rates 2016-2017 information from NJDOE.

Private School	County	Their Tuition for 2016-2017	SCESC Tuition for Academy 2016-2017	Cost Difference	SCESC Tuition for Career Center 2016-2017	Cost Difference
Bonnie Brae School	Somerset	\$77,738	\$46,889	(\$30,849)	\$59,150	(\$18,588)
The Center School	Somerset	\$67,038	\$46,889	(\$20,149)	\$59,150	(\$7,888)
East Mountain School	Somerset	\$73,766	\$46,889	(\$26,877)	\$59,150	(\$14,616)
Green Brook Academy	Somerset	\$73,627	\$46,889	(\$26,738)	\$59,150	(\$14,477)
Honor Ridge (formerly Somerset Hills School)	Somerset	\$85,582	\$46,889	(\$38,693)	\$59,150	(\$26,432)
Lord Stirling School	Somerset	\$103,294	\$46,889	(\$56,405)	\$59,150	(\$44,144)
Montgomery School	Somerset	\$66,094	\$46,889	(\$19,205)	\$59,150	(\$6,944)
New Road School	Somerset	\$56,418	\$46,889	(\$9,529)	\$59,150	\$2,732
Rock Brook School	Somerset	\$74,785	\$46,889	(\$27,896)	\$59,150	(\$15,635)
Gateway School	Middlesex	\$62,057	\$46,889	(\$15,168)	\$59,150	(\$2,907)
New Road School	Middlesex	\$60,534	\$46,889	(\$13,645)	\$59,150	(\$1,384)
You and Me School	Middlesex	\$57,002	\$46,889	(\$10,113)	\$59,150	\$2,148
C.P.C. High Point	Monmouth	\$73,795	\$46,889	(\$26,906)	\$59,150	(\$14,645)
Coastal Learning Center	Monmouth	\$59,367	\$46,889	(\$12,478)	\$59,150	(\$217)
Collier	Monmouth	\$65,952	\$46,889	(\$19,063)	\$59,150	(\$6,802)
Hawkswood School	Monmouth	\$75,301	\$46,889	(\$28,412)	\$59,150	(\$16,151)
Rugby School	Monmouth	\$78,918	\$46,889	(\$32,029)	\$59,150	(\$19,768)
Oakwood School	Monmouth	\$51,618	\$46,889	(\$4,729)	\$59,150	\$7,532
Alpha School	Ocean	\$64,690	\$46,889	(\$17,801)	\$59,150	(\$5,540)
The Education Academy	Ocean	\$60,024	\$46,889	(\$13,135)	\$59,150	(\$874)
Lehmann School	Ocean	\$72,023	\$46,889	(\$25,134)	\$59,150	(\$12,873)
New Road School	Ocean	\$60,051	\$46,889	(\$13,162)	\$59,150	(\$901)
Ocean Academy	Ocean	\$55,931	\$46,889	(\$9,042)	\$59,150	\$3,219
Deron School	Union	\$64,514	\$46,889	(\$17,625)	\$59,150	(\$5,364)
First Children's School	Union	\$80,037	\$46,889	(\$33,148)	\$59,150	(\$20,887)
Newmark High School	Union	\$59,376	\$46,889	(\$12,487)	\$59,150	(\$226)
Newmark School	Union	\$56,247	\$46,889	(\$9,358)	\$59,150	\$2,903

Chart 1

The chart about shows the Somerset County Educational Services Commission's out-of-district tuition rates for special needs students as compared with other private schools providing equivalent services. All costs indicated in red are savings to the local communities.

Data Source: SCESC Office of the Superintendent



NORTH WARREN REGIONAL SCHOOL DISTRICT

Sarah Bilotti, M.Ed., Superintendent

P.O. Box 410, 10 Noe Road, Blirstown, NJ 07825
Phone: 908-362-9342 ♦ Fax: 908-362-8744

March 22, 2017

Summary

Health Care – a plan design change to the state health care plan

Private Special Education Schools – adhere to the same fiscal and operational standards as public schools

Budget Cap – An allowance to go beyond the 2% tax levy budget cap for extraordinary special education costs

Dispute Resolution – Move to a panel-based resolution process in lieu of ALJ hearings to arbitrate special education disputes

Testimony

I agree with all of the statements made so far, especially the comments regarding health insurance. It is our belief that the only way to reduce costs is to mandate the state health plan system consider plan design changes.

We are a regional district in a rural area in northwest NJ. Our budget is capped at 2% and we follow all accountability guidelines so that our costs are kept in check. We are also held to the Quality single accountability standards for our operations and curriculum.

We ask that the private schools for students with disabilities that have been approved by the DOE be held to the same accountability standards for both their budgets and their curriculum and operations. The schools with whom we work have raised tuition in excess of 10% every year for the last two years. They are not held to the same accountability standards for budget or curriculum and this negatively impacts our students and our district.

The suggestion of allowing extraordinary special education costs to be an exception to the 2% cap would also help address this from a budgetary standpoint.

We also are in a position that the new criteria for bus drivers is negatively impacting our ability to find drivers and is impacting program. We were unable to run late busses this year due to a shortage of drivers.

Lastly, I would ask that the legislature again consider moving away from the ALJ dispute process and toward a panel process such as what is in place in our neighboring states of PA and DE.

SEAA Executive Committee

2016-2017

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North Jersey Special Education Administrators Association

March 22, 2017

Dear Members of the Joint Committee on Public Schools:

My name is Stephanie DeBruyne, and it is my honor to represent the North Jersey Special Education Administrators Association. NJSEAA represents administrators from public schools, charter schools, and approved private schools for students with disabilities. I thank you for this opportunity to share our Association's concerns about Trends with Unanticipated Special Education Costs for Public School Districts, and some considerations for your committee.

A. Transition of toddlers from Early Intervention programs to School programs

Infants and toddlers with special needs younger than three years old receive services from Early Intervention programs. As the toddlers approach age three, the transition process to School Districts begins. Because preschool entrance into school Districts is not dictated by a clear date as with Kindergarten, requests for evaluations for toddlers transitioning out of Early Intervention programs can occur at any point throughout the calendar year. This poses a challenge for Districts; they prepare budgets in January for the upcoming school year, based upon the students they know of, and anticipate having. As a result of this rolling admission process, Districts often are faced with program needs for three year olds without being aware that these students would be enrolling and in need of special education services. These unanticipated costs include the hiring of additional teaching staff,

related service personnel, securing appropriate classroom space, and all related program costs.

A consideration may be for the Department of Education to survey Districts regarding the number of unanticipated students, under the age of five, who enrolled and were determined eligible for Special Education services, including the dates of enrollment and respective eligibility. This information could potentially assist the Department in the allocation of funding for School Districts.

B. 18 to 21 year-old programs for students with disabilities

Special Education law indicates that Districts are required to provide programming to those students in need, up to the age of 21 years. As a result, Districts may have incurred costs impacting their budget in order to provide a "Free and Appropriate Public Education" (FAPE) for these students. In order to build capacity for students needing these programs, Districts have begun creating their own 18 to 21 year-old programs.

Districts in Bergen County have begun to meet regularly in order to collaborate and assist each other as their programs begin and grow.

A consideration for the Department would be to facilitate a "Best Practices Toolkit" for Districts that are looking to establish these programs.

C. Requests for expensive Evaluations beyond those conducted by School Districts

School Districts are asked, on a regular basis, to provide evaluations beyond those already completed by their specialized staff. These evaluations can be well over \$2000. Bergen County Districts have begun jointly negotiating rates with a number of providers. This has proven to be a cost-saving measure for them.

We recommend that school districts throughout the State begin jointly negotiating rates with providers to address this rising trend.

D. A Level Playing Field for public and private schools for students with Disabilities

A core component of the delivery system for students with disabilities is the partnership between public and private providers. Based upon the individual needs of each child, a district determines the appropriate educational placement, which may be a private school. Since the public school is financially responsible for the private placement, NJSEAA recommends that the financial rules in place for private schools are similar to the financial rules, including salary caps that are in place for the public schools. This will allow a consistent focus on student needs not the fiscal operations of the private school. Currently, the State Board of Education is considering this issue through code recommendations.

Thank you for your consideration of some current concerns of NJSEAA.



**NJPSA Testimony on Special Education Issues in New Jersey
Before the Joint Committee on the Public Schools
Wednesday, March 22, 2017**

Good Morning and thank you for the opportunity to discuss the important topic of special education in New Jersey. As an association, the NJ Principals and Supervisors Association shares your commitment to students with learning disabilities in our state. We represent educators who serve our students in the role of Directors of Special Services as well as principals and other supervisory employees. Our members work at the school level to ensure that each student is provided a quality education to meet his/her unique learning needs and is assisted in meaningful ways to support their learning.

Today, we appreciate the chance to share a few overarching issues that are on our minds in the context of special education in our schools. Then, I would like to turn the conversation over to Dr. Paul Barbato, the Director of Special Services in the Dumont school district who will share his insights with the committee.

1. Special Education Funding

NJPSA shares the concerns of many speakers in the room today about the funding of special education in our state. The needs of students with learning disabilities are complex and often costly, yet both our federal and state governments have not adequately addressed the important costs of providing needed supports throughout our state. At the federal level, Congress promised to fund special education services at the 40% level of the average per pupil cost when it enacted the Individuals with Disabilities Education Act in 1975. Unfortunately, federal funding for mandatory special education services has never approached that funding level – instead federal funding for students with disabilities currently hovers at about 16.5% of the promised funding level, with proposed funding cuts from the new Administration a real possibility.

At the state level, schools are similarly underfunded for these critical programs and services so these underfunded yet mandated costs end up impacting students in both the special education and general education programs.

Our state school funding law, the School Funding Reform Act of 2008 (SFRA), modified the mechanism for funding special education in our state. Instead of funding our students based upon their level of need based upon the nature and severity of their disability through four tiers of funding, the SFRA based special education funding upon a census-based funding model in an effort to control spending. In this approach, all districts are funded for the same percentage of special education students (state classification rate) multiplied by the number of students needing services (exclusive of speech only students who are funded differently). This funded count is then multiplied by the special education per pupil funding amount and then wealth equalized for 2/3 of this amount with the state fully funding the final third of this amount.

The intended goal of this change in funding methodology was to reduce classification rates and spending levels. At the time of enactment, NJPSA and other stakeholder groups raised concerns about moving away from a system that funded districts based upon classification rates, not actual student needs in districts. We continue to believe this today and urge this Committee to explore the impact of this change in funding methodology.

In practice, the SFRA has not been funded according to its formula for the past 8 years. Instead, the pool of funding for special education services has been essentially flat funded for this time period. As a result, local communities and school districts have born a disproportionate share of the burden of the mandated costs of providing special education services to meet the unique learning needs of each child.

To exacerbate this problem, the state has not significantly increased the funding pool for another critical area of need - high cost placements which are defined as placements costing above \$40,000. These issues combined with the unexpected entrance of a new student to a district, the transition of a preschooler from early intervention to district based services at age 3 and other variations in costs during the school year can totally up-end, not only the special education program of a district, but the budget for general education as well.

To address these issues, NJPSA recommends that you consider the following:

- Review the findings of the School Funding Task Force and revisit the census-based funding formula;
- Increase the pool of funding for high cost placements to provide a greater state share of this funding which can cripple a local district's budget;
- Modify the current tax levy cap law to exclude special education costs from the cap in order to provide more budget flexibility at the local level.

2. Transition, High Need and Therapy Services - The Need for Inter-Agency Responsibility, Funding and Collaborative Partnerships

Another issue on the minds of our members is the issue of transition services – for students who transition from our high schools into college, career or other community-based settings. Local school districts need support to better serve our students. Students in these transitional stages need better information, program alignment and a broader range of services. Local school districts may be limited in the scope of services they are able to offer locally.

As a result, NJPSA believes that there is a need for a regional, inter-agency approach. We recommend that this Committee promote and enhance access to community based services and programs through inter-agency collaboration not only in the area of transition services but even in the delivery of therapy services (physical therapy, occupational therapy, speech services), mental health, and vocational rehabilitation services to students in need. This collaborative multi-agency approach would be especially constructive for students in high cost placements where the need for complex, sometimes round the clock medical care, family services and educational services are all critically important and must be aligned

Additionally, there is a need for supporting regional service providers to meet student needs. Such service models do exist and should be replicated as best practice throughout the state. In a moment, you will hear about the regionalized model in Bergen County from Dr. Barbato.

3. Looming Teacher Shortage

One final issue that NJPSA would like to bring to your attention is our concern about a looming teacher shortage in the supply of teachers who are properly certified to teach students with disabilities. When the federal No Child Left Behind statute was enacted in 2001, the law required that all teachers be “highly qualified” to teach all subject areas that they were assigned to teach. For teachers of students with disabilities, this was a change that had an impact mostly on teachers in middle and high schools who had to have multiple endorsements.

With the passage of the Every Student Succeeds Act (ESSA) in December 2015, federal law changed again. This time, ESSA eliminated the restrictive approach of NCLB to remove the highly qualified requirements yet districts still must seek individuals with content knowledge and grade level certification. In practice, most teachers of students with disabilities are certified at the elementary level. This fact and the current trend that many of the experienced special education



teachers who had the broad certification of Teacher of the Handicapped are retiring is raising concerns for future hiring. Many new teachers will have to seek additional coursework and certifications to fill vacancies particularly in our middle and high schools.

As an organization, NJPSA/FEA has addressed similar shortages in administrative ranks by developing an expedited certification process for school leaders which has been authorized by regulation. A like approach could be pursued to address this looming shortage of teachers in the special education ranks.

4. IEP Facilitation Project

One positive development we would like to bring to your attention is the NJDOE IEP Facilitation Project which is currently underway. As you know the development of a student's Individualized Education Plan (IEP) is a key component of their special education program. Experts in both specific disabilities, learning, behavior and psychology work with parents to develop these plans. Many districts do an excellent job in working with parents on these critical IEPs, yet disagreements in approach and placement can and do result. The facilitation project is focused on adding professional facilitators to these important meetings to help both districts and parents work toward productive solutions and to learn strategies for improved communication and more successful meetings. Both parents and the district must agree to the facilitation process. This innovative new program is currently small in size and has limited funding from the NJDOE to support its work. NJPSA recommends that the committee seek more information on this project and assist in funding this new program through the State Budget process.

Thank you for your consideration of our concerns on behalf of the students we serve.



March 22, 2017

Dear Members of the Joint Committee on Public Schools:

My name is Paul Barbato, and it is my honor to represent the New Jersey Principals and Supervisors Association. I thank you for this opportunity to share some ideas with your important committee.

A) Regionalized Shared Services

Currently, I serve as a Director of Special Services with the Dumont public school district, which is in Bergen County. In order to meet the many needs facing school districts for services for children with special needs, Bergen County has taken the step of dividing its districts into 7 geographical regions for service delivery. My school district is one of 13 school districts in this regional delivery model. The school districts, within their respective regions, developed a variety of shared programs and services, rather than each district having to “reinvent the wheel” duplicating services with their neighboring district, and hiring staff to oversee these services. A variety of shared services and programs that are available include:

- IEP driven related services: Transportation, Occupational Therapy, Physical Therapy, Speech Therapy;
- Behavioral supports for parents after school;
- School based behavioral supports;
- Social skills programs / summer programs for children;
- Professional development for district personnel;
- Additional Child Study Team evaluators for school districts as needed; and
- Negotiated rates with physicians for specialized evaluations.

This model continues to be viable and cost efficient for school districts and could be replicated in other counties in New Jersey. As noted, districts do not have to identify or hire staff to organize, arrange, and/or secure these services. In addition, the following benefits have been identified by districts participating in this model:

- Students have been maintained in-district due to the high level of behavioral supports provided by the Regional model;
- The regional model affords districts the ability to centralize contracts, payments, as well as coordination of specific services; and

- Transportation route costs are shared by districts who send students to same programs.

A consideration for the Committee and the Department of Education would be to have meetings among districts not participating in a regional model with current regional and district Directors to learn about the model, including the positive program options and cost savings that have resulted.

B) Affiliation agreements with Higher Education Institutions

With the number of students exhibiting social-emotional difficulties, school districts may not be equipped to provide appropriate proactive and responsive services to address these needs. School districts in Bergen County have affiliation agreements with higher education institutions that provide school based internships for students enrolled with graduate school psychologist and school social worker programs. These affiliation agreements allow for graduate students to serve within the public school setting as part of their requirements for NJDOE certification. As a result, school districts benefit from additional support, whether the interns serve as consultants to school personnel and parents or provide direct services to students, under the supervision of certified school personnel.

A consideration for the Committee and the Department of Education would be to facilitate meetings with districts with identified affiliation agreements with higher education institutions, for districts that are looking to establish these partnerships.

Thank you for the opportunity to present our experience in Bergen County as one innovative approach toward meeting the needs of our students with disabilities.



New Jersey School Boards Association

Celebrating 100 years of service

EXECUTIVE SUMMARY

Stop talking about cost-cutting. Talk instead about cost-effectiveness. It's a difference that cuts to the heart of the matter. Cost-cutting assumes that we are taking something away from children. No one wants to support it. Cost-effectiveness means getting the same or better results for less money. No one wants to not support that.

– Nathan Levenson
'A Win-Win Approach to Reducing Special Education Costs'

Introduction

To address the continuing pressure that special education places on local district budgets, the New Jersey School Boards Association embarked on a major study in January 2013. Creation of the Special Education Task Force represents a key initiative of NJSBA's executive director, Dr. Lawrence S. Feinsod. "The goal is to reduce special education costs to local school districts without diminishing the quality of needed services. There is a dire need to develop strategies that will maintain quality services, without negatively affecting resources for general education programming," he explained.

Appointed by NJSBA President John Bulina, the Task Force is comprised of local board of education members, a chief school administrator, and a school business administrator. It is chaired by Dr. Gerald J. Vernotica, associate professor at Montclair State University, former New Jersey assistant commissioner of education, executive county superintendent, and a former district superintendent, principal, teacher, and director of special services. The Task Force was charged with reviewing the state's current process for funding special education; studying other states' systems of providing special education; exploring alternative funding methods; and identifying cost-efficient strategies to fund and deliver special education services.

History of Funding As far back as 1911, state aid was established to cover the excess cost of special education, that is, those costs that exceed expenditures for general education. State funding initially covered half the cost of special education. Later, the funding was based on the category of disability. In 1996, state funding shifted from categorical aid allocated according to program to a distribution method based on four tiers defined by disability. Additional aid for extraordinary circumstances was added in 1996 and refined by a law enacted in 2002. State funding for speech-language services was built into general education aid because it was such a common service that separate funding was not needed.

Since 2001, special education expenditures have increased faster than state funding. As a result, the percentage of special education costs covered by state aid dropped by about one-quarter. Additionally, the local levy cap law (*P.L.* 2010, c.44), restricted the ability of school districts to budget for increased local revenue to offset the lack of state aid. Federal aid was initially based on a per pupil reimbursement but changed in the 1990s to a formula that included a base amount, a factor to reflect enrollment growth, and a poverty factor. When the federal special education law, the Individuals with Disabilities Education Act (IDEA), was first enacted in 1975, the

federal government promised to cover 40% of the cost of implementing required special education services. However, the amount actually covered by federal funding is less than one-tenth of required special education services.

In 2007, the NJSBA commissioned a study, "Financing Special Education in New Jersey." This year-long research project included statistical analysis of state and federal data, independent data collection, and on-site visits to school districts. (The full 225-page report can be accessed at: <http://www.njsba.org/specialeducation/>.) The study found that the growth in special education costs, which then totaled \$3.3 billion for roughly 240,000 students, could be largely attributed to tuition and transportation for out-of-district programs.

According to the 2007 study, the intensity of special education programs had increased over the previous decade, with more students placed in out-of-district autism programs and related services. For local school districts, that trend is critical because, as indicated in the study, 57% of special education costs are borne by local property taxpayers. The remainder comes from the state (34%) and the federal government (9%).

In 2008, New Jersey enacted a new school funding formula, which made several changes in how the state provides aid for special education. The School Funding Reform Act bases one-third of special education funding—that is, the proportion awarded to districts regardless of wealth—on the average percentage of students that receive special education services statewide, which at the time of the law's enactment was 14.69%. In fact, the number of classified students in an individual district could be far greater. In addition, the formula distributes the other two-thirds of state funding on ability to pay, rather than the number of students served, thereby driving up the local share of special education costs.

Focus of Project The NJSBA Special Education Task Force began its work in January 2013 and met 13 times, concluding the project in March 2014 with the production of this report. During its deliberations, the Task Force consulted with national and state special education experts, key personnel in the New Jersey Department of Education (NJDOE), special education advocates, practitioners, and academics.

The Task Force interviewed and received presentations from the following individuals:

- Kevin Dehmer, Director, Research and Data Analysis, Office of School Finance, NJDOE
- Dr. Peter Griswold, Chair, Special Education and Counseling, William Paterson University
- Dr. Monroe Helfgott, Inclusion Coordinator, Montclair Public Schools
- Dr. Lauren Katzman, Assistant to the Superintendent, Special Education, Newark Public Schools
- Dr. Howard Lerner, Superintendent, Bergen County Technical and Bergen County Special Services School Districts
- Linda Mithaug, Director of Pupil Services, Montclair Public Schools
- Judy Savage, New Jersey Council of County Vocational-Technical Schools
- John Worthington, Esq., Manager, Office of Special Education Programs, NJDOE
- Dr. Matthew Jennings, Superintendent, Alexandria Township School District
- The Honorable Teresa Ruiz, Chair, Senate Education Committee, 29th Legislative District

In addition, Dr. Vernotica, chairman, consulted with the following individuals:

- Dr. Bruce Baker, Professor, Rutgers University, Graduate School of Education
- Dan Bland, Assistant Superintendent, Dr. Carole Baker, Supervisor, and Jonathan Hart, Assistant Director of Special Services, Flemington-Raritan Regional School District
- Susan Bruder, New Jersey Department of Education, Division of Early Education, K-3
- Christopher Cerf, Commissioner of Education, State of New Jersey
- John B. Comegno II, Esq., The Comegno Law Group, P.C.
- Brenda Considine, New Jersey Coalition for Special Education Funding Reform
- Stephen Cornman, Statistician, Director, National Center for Education Statistics
- Barbara Gantwerk, Assistant Commissioner, NJDOE
- Dr. Barry Galasso, Director, Bucks County, Pennsylvania, Intermediate Unit
- Dr. Kristopher Harrison, Superintendent, Irvington Union Free School District, New York
- Nathan Levenson, Managing Director, District Management Council
- Ruth Lowenkron, Esq., Education Law Center
- Dr. Peggy McDonald, Director, Office of Special Education Programs, NJDOE
- Mari Molenaar, Ed.D., Special Education Consultant, former Senior Research Analyst at the New Jersey Department of Education, and co-author of NJSBA's 2007 study, "Financing Special Education in New Jersey"
- Dr. Thomas Parrish, Director, Center for Special Education Finance
- Dr. Erin Servillo, Director of Student Services, Lawrence Township Public Schools
- Sandra Simpson, Chief Operating Officer, Southern Westchester BOCES, New York
- Dr. Harold Tariff, Former Director of Special Services, School District of the Chathams, Interim Director of Special Service for several school districts, Mediator
- Daniel Vorhis, Director of Professional Education, Bucks County, Pennsylvania, Intermediate Services Unit

Dr. Vernotica also met with various focus groups, consisting of county supervisors of child study and directors of special services.

As part of its work, the Task Force conducted two surveys: a national survey looking at alternative methods of funding, such as lotteries, business fees, and foundation grants; and a statewide survey of superintendents and special education directors that focused on staffing and expenditures.

During its deliberations, the Special Education Task Force focused on the following questions:

- *How does New Jersey currently fund special education?*
- *How do other states fund special education?*
- *How do we identify equitable, adequate and fair funding mechanisms?*
- *What are the current levels and sources of funding and how do they relate to outcomes?*
- *What laws and regulations provide for the delivery of special education programs and services?*

- Does the upcoming reauthorization of IDEA present opportunities to improve outcomes for both general and special education students?
- *What are some promising themes and practices associated with effective, inclusive schools?*
- What outcomes do we expect for special education programs and services? How can we meet these expectations in a cost-effective manner?
- *What role should county special services schools, jointure commissions and educational services commissions play in supporting local school district efforts to provide special education services in the least restrictive environment? What can be learned from other states that have county or regional service models?*
- How can we strengthen general education so that it provides greater support to all students in all environments and averts over-classification? What roles can Response to Intervention (RTI) and Universal Design for Learning (UDL) play in improving the achievement of all students?
- *Can we provide improved training for our child study teams to reduce destructive Individual Education Program-related conflicts and build greater trust with parents so that such issues can be resolved to the satisfaction of districts, parents and students?*
- Can we systemically change the prevailing mindset of special education from a “place we live” to “a place we visit”?

NJSBA Policy Current policy of the New Jersey School Boards Association is based on the belief that all educationally disabled students should receive an appropriate public education within our state and, where possible, within the general education environment. The Task Force was also charged with recommending changes to NJSBA’s *Manual of Policies and Positions on Education*, if appropriate. Recommended policy changes begin on page 47 of this report.

Findings and Recommendations

Major Findings

Early Action Research identifies themes and practices that improve the academic outcomes of special education students. These practices overlap with the body of work on effective schools. The overlap suggests that, to improve academic achievement for special education students, priority should be given to successful strategies in general education with attention to inclusive practices (Huberman, Navo and Parrish, 2011, p.5).

School districts should familiarize themselves with the effective schools research base, as well as with themes and practices that improve the academic performance of special education students. This research formed the framework of the Task Force’s discourse, which ultimately provided a conceptual map supporting a more integrated approach to special education as a way to improve quality and reduce costs.

Major Themes (Huberman, Navo & Parrish, 2011, p.13)
• Inclusion and access to the core curriculum
• Greater collaboration between special education and general education teachers
• Continuous assessment and use of Response to Intervention (RTI) ¹
• Use of Explicit Direct Instruction ²

Effective Practices Effective leadership: instructional and transformational (Huberman, Navo & Parrish, 2012, p.61)
1. Curriculum aligned with the current N.J. Curriculum Framework
2. Effective systems to support curriculum alignment
3. Emphasis on inclusion and access to the curriculum
4. Culture and practices that support high standards and student achievement
5. A well-disciplined academic and social environment
6. Use of student assessment data to inform decision-making
7. Unified practice supported by targeted professional development
8. Access to resources to support key initiatives
9. Effective staff recruitment, retention, and deployment
10. Flexible leaders and staff who work effectively in a dynamic environment

¹ “**Response to Intervention (RTI)** is a multi-tier approach to the early identification and support of students with learning and behavior needs. The RTI process begins with high-quality instruction and universal screening of all children in the general education classroom. Struggling learners are provided with interventions at increasing levels of intensity to accelerate their rate of learning. These services may be provided by a variety of personnel, including general education teachers, special educators, and specialists. Progress is closely monitored to assess both the learning rate and level of performance of individual students. Educational decisions about the intensity and duration of interventions are based on individual student response to instruction. RTI is designed for use when making decisions in both general education and special education, creating a well-integrated system of instruction and intervention guided by child outcome data” (From RTI Action Network, National Center for Learning Disabilities, Washington, DC, <http://www.rtinetwork.org/learn/what/whatisrti>).

² Explicit Direct Instruction (EDI) is a model, which includes components for lesson design and specific instructional delivery strategies (Hollingsworth and Ybarra, 2009).

Response to Intervention In a guide for school districts on the application of Response to Intervention, a steering committee of the Vermont Department of Education and the University of Vermont states that, “RTI is a process that cuts across general, compensatory, and special education, and is not exclusively a general or special education initiative” (Vermont, 2012, p.1).

A preventive approach is intended to rectify a number of long-standing problems, including the disproportionate number of minorities and English language learners identified as learning disabled and the practice of waiting for documented failure before providing services. The clear...intent is to provide an alternative means of identifying students with learning disabilities and to reduce the number of students who are identified as learning disabled by preventing academic and behavioral difficulties from developing by providing prompt and focused instruction and intervention at the first indication of difficulty (Vermont, 2012, pp.1-2).

Continuum of Programs The Task Force believes that special education should be viewed as “a place to visit, not a place to live.” This perception requires us to no longer consider the education system as one that is bifurcated into “special” and “general” sectors. The new vision defines special education as a continuum of interventions, programs and services that any student receives to meet his or her unique needs.

Staffing Levels A survey conducted as part of NJSBA’s 2007 study of special education funding identified “personnel,” “transportation” and “out-of-district placement” as the major cost drivers. In the Task Force’s 2013 survey of superintendents and special education directors, “personnel” was the most frequently cited cost driver. The Task Force recognizes the impact of higher classification rates on staffing and, consequently, special education costs.

Shared services The Task Force believes that regional provision of related and support services would reduce costs, support inclusion and allow school districts to direct more resources to the delivery of services at the classroom level. The state should provide incentives for sharing on regional or county bases while removing any regulatory and financial obstacles.

Recommendations

- 1. Early Intervention**—To address over-classification, the state should develop a multi-tiered system of supports, such as Response to Intervention (RTI) and Intervention and Referral Services (I&RS), or a comparable model providing free access to materials and technical assistance to ensure fidelity to the multi-tiered process and alignment to the common core curriculum.

Such research-based approaches would identify students with learning needs at an early stage and implement strategies within the general education setting, while providing on-going assessment and evaluation. They would also address the disproportionate classification of minority students. In addition, this system would present an alternative method for acquiring data to determine a student’s need for special education.

2. **Staffing Analyses**—To control and reduce staffing costs, the state and local school districts should conduct school- and district-based analyses of staffing and service levels. In addition, the state and federal governments should establish regional, state and national benchmarks that identify the utilization of special education financial and human resources (Levenson, 2009).
3. **Shared Services: Regional Delivery Incentives**—NJDOE and local school districts should explore a voluntary Regionalized Special Education Model/Shared Services Model, in which the county special services school districts, the educational services commissions and the jointure commissions serve as coordinated hubs for special education and related services.

Through a “Regionalized Diagnostic Model,” for example, regional child study teams would complete educational evaluations and give results/findings to the local education agency for implementation. By placing such diagnostic functions at the regional or county level, more time would be available for team members to work directly with parents, teachers, and students. Other examples of regional services include: transportation, personnel, professional development, technology, preschool programming and other services that support inclusive practices.

4. **Shared Services: Encourage Local Initiative**—To reduce costs and improve efficiency and quality, New Jersey should provide financial incentives for districts to work on shared-service models with other local districts and on county and regional bases.

Economies of scale often improve programmatic processes and outcomes in addition to being cost-effective. An example is the recent study in the North Hunterdon-Voorhees Regional School District. Wide disparities in classification and staffing patterns exist among the elementary-level districts whose students attend the regional high schools. The study recommended consolidation of policies, procedures and practices related to the identification and evaluation of students with disabilities. The districts are currently working on developing a common policy manual for this purpose.

5. **Shared Services: Medicaid Reimbursement**—To maximize reimbursement under the federal Special Education Medicaid Initiative (SEMI), the state and local school districts should explore the potential effectiveness of creating consortia to complete the administratively burdensome filing process. In addition, the state should streamline current procedures to minimize the administrative burden on school districts.

Currently, a number of eligible districts opt not to file for reimbursement because the resources expended outweigh any benefit. Therefore, New Jersey does not receive federal revenue that would offset the cost of special education.

6. **Shared Services: Eliminate Impediments**—The Task Force also recommends that the state eliminate any impediments to the use of regional and county service models. The state should consider sponsoring a study on ways to further promote participation by governmental agencies in shared services.

In 2007, NJSBA conducted a study of shared services among school districts and municipalities. An example of impediments found by the researchers involved an administrative code provision addressing placement in the least restrictive environment. The researchers determined that the provision was being interpreted by some school officials as limiting the use of county and regional providers (IELP Rutgers-Newark and NJSBA, pp.56-57). The language at issue remains in current regulations. It should be reviewed and clarified by the New Jersey Department of Education (NJDOE) and/or the State Board of Education so that it is not misinterpreted as restricting the shared delivery of programming through county and regional providers.

7. **Shared Services: Transportation**—The NJDOE should continue to encourage shared transportation services through initiatives such as common county calendars and incentives.

The Task Force's 2013 survey indicates that there is room for growth in shared special education transportation services. Although a wide majority of respondents indicate that they share transportation services, 12.2% identified "transportation" problems, such as school starting and ending times and distance, as obstacles to increasing shared services.

8. **Due Process**—The state should amend existing statute and place the burden of proof in disputes over individual education programs on the party bringing the complaint, rather than on the school district.

Under a 2007 New Jersey statute, the burden of proof in complaints challenging a child's Individual Education Program (IEP) is always placed on the school district, rather than on the party bringing the complaint. In the Task Force's 2013 survey of superintendents and special education directors, over 38% of respondents cited the "adjudication process" as an area requiring legislative and regulatory change. Most frequently cited was a need to place the burden of proof on the party bringing the complaint, the usual standard in legal proceedings. In the past, school officials and school board attorneys have expressed concern that the 2007 statute would increase legal fees and staff time to review and prepare documents and make "fear of litigation" a factor in a school board reaching an agreement on an IEP challenge. (For further information on this issue, see "Results of 2013 Survey," Appendix A of this report, pp.11-13.)

9. **Funding: Effective Strategies**—In an effort to improve student outcomes and determine adequate funding, the state should identify the resources, programs, and delivery models that contribute to improved student performance. In addition, the state should provide technical assistance and funding to promote the implementation of these identified delivery models. Further, the state should promote efforts that "dig deeper into better understanding the cost structures of these approaches" (Baker, *et al.*, 2013, p.113).

The Task Force cites the work of Professor Bruce D. Baker of the Rutgers University Graduate School of Education, which indicates that adequate cost can only be determined after identifying the outcomes we want and the programs that optimally meet those quality indicators in terms of spending.

10. **Funding: Reliable Expenditure Data**—The Task Force recommends that local school districts work with their auditors to put into place processes that ensure the consistency and accurate coding of special education expenditures and reported information.

This recommendation would give school districts the data needed to better manage resources. A district-level calculation of special education costs is critical because of the variability in the level of programs and services provided to students with IEPs across the state. Current state-level data collection does not reflect the differentiation of special education costs in some categories. Local school districts would be able to conduct more specific analyses.

In the course of its work, the Task Force found a lack of reliable statewide expenditure data for special education. This recommendation would also provide more accurate statewide data.

11. **Funding: Medical Needs**—The Task Force recommends adjustment of federal law so that the cost of some related services, regardless of where the services are provided, are considered “medical,” rather than educational.

The cost of related medical needs diverts resources that should be available for special education programming. By appropriately classifying certain services as “medical,” rather than educational, school districts would be able to obtain reimbursement from health insurers.

12. **Funding: Extraordinary Aid**—The state should ensure that school districts and local property taxpayers are insulated from the financial impact of low-incidence, high-cost placements by providing adequate Extraordinary Special Education Cost Aid.

In a 2000 report, the NJSBA Special Education and School Finance Committees called for state payment of the full excess costs of special education. Expansion of the Extraordinary Special Education Costs Aid in 2002 represented a major step toward that goal. In recent years, however, the state has limited district access to extraordinary cost aid by increasing the threshold for its receipt.

13. **Funding: Literacy**—The federal IDEA should allow greater flexibility in the use of funds for supplemental literacy and math programs in more inclusive settings.

The Task Force focused on the work of Nathan Levenson, whose research stresses incorporating a “relentless focus on reading instruction” into special education policies and practices. When reading improves, classification rates drop (Levenson, 2011, p.5). He cites recommendations of the U.S. Department of Education’s What Works Clearinghouse, which include “clear and rigorous grade-level expectations for reading proficiency” and “early identification of struggling readers, starting in kindergarten.”

14. **Funding: Outcomes-Based**—To support and achieve ambitious learning goals, special education funding mechanisms must be restructured to support an outcomes-based paradigm.

Finance systems are complex, intricate and input-based, not student-outcome centered. A system that rewards districts and schools that meet ambitious learning goals, prioritizes

resources, models fairness, transparency, predictability and equity, decreases achievement gaps and provides the opportunity for the development of local educators to manage resources effectively is needed. This could be achieved through a funding mechanism that is sensitive to the legitimate variation in student needs.

15. **Funding: Alternative Sources**—The state should explore predictable and dedicated alternative supplemental methods of special education funding, including, but not limited to lottery, business fees, insurance, and grants.

The 2013 Task Force survey of state education departments and school boards associations identified five states that have alternative funding methods for special education. A New York official, for example, estimated that \$1 billion in lottery proceeds is allocated to special education in his state.

16. **Professional Development**—School districts and regional centers should provide targeted professional development to avoid IDEA violations.

Such training, done regularly, would prevent costly procedural and substantive errors, reduce legal exposure and promote and preserve a positive working relationship among districts and the parents and children that they serve.

17. **Technical Assistance: IDEA Compliance**—The Department of Education should continue to expand professional development and technical assistance to school districts on “applying scientifically based findings to facilitate systemic changes related to the provision of services to children with disabilities, in policy, procedure, practice, and the training and use of personnel” (IDEA, sec.663).

Areas of importance include understanding neurodevelopmental variation, establishing multi-tiered intervention systems, creating an inclusive school culture and climate, monitoring progress, and developing positive parent-educator relationships. Districts that have large numbers of students with IEPs in separate schools and classrooms should receive technical assistance to ensure adequate supports in the least restrictive environment.

18. **Technical Assistance: Facilitating Savings**—The state should redouble its efforts to assist districts in creating efficiencies and improving program quality.

Statute enacted in 2007 (*N.J.S.A. 18A:7-8*) calls on the NJDOE county offices of education to “facilitate shared special education services within the county including, but not limited to, direct services, personnel development, and technical assistance.” Other provisions of the law direct the county offices to work with districts to develop in-district special education programs and services, including providing training in inclusive education, positive behavior supports, transition to adult life, and parent-professional collaboration; and to provide assistance to districts in budgetary planning for resource realignment and reallocation to direct special education resources into the classroom. However, state assistance in these areas has varied among the regions and has been affected by staffing changes in the county offices.

19. **Professional Development: Board Members**—Board of education members should receive training that includes exposure to the legal, fiscal and programmatic aspects of special education to help promote the achievement of all of the students in their districts.

Studies stress (a) the importance of school leaders who can create, support and celebrate a culture of positive relationships, professionalism and trust in special education, and (b) the linkage between effective school board governance and student achievement.

20. **Professional Development: Pre-service Teachers**—The state should require that teacher preparation programs include content in adapting curriculum, instruction and assessment to meet the needs of all learners in the inclusive classroom.

Pre-service teachers should have ample opportunity to learn and apply the instructional methods associated with multiple intelligences, multi-sensory instruction, differentiated instruction, intensive instruction, Universal Design for Learning, curriculum-based assessment, and assistive technology. Pre-service teachers should be equipped to establish learning environments that maximize attention and learning through the careful application of positive behavior supports and effective communication. Further, teacher preparation programs for pre-service teachers earning the Pre-Kindergarten through 3rd grade or the elementary education (K-6) certifications should include content in teaching students with reading disabilities.



New Jersey School Boards Association

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March 22, 2017

Testimony on Special Education Before the Joint Committee on the Public Schools

My name is Irene Lefebvre and I am a local school board member with the Boonton Town Board of Education. I am also the chair of the New Jersey School Boards Association's (NJSBA) Special Education Committee, which is made up of a select group of board members with special education experience who assist the Association in setting special education policy and goals. It is in that role that I speak to you today.

The NJSBA is a federation of all of New Jersey's local boards of education. NJSBA provides training, advocacy and support to advance public education and promote the achievement of all students through effective governance.

The NJSBA believes that all New Jersey special education students should be provided an appropriate public education within our state and, where possible, within the regular school environment.

There are two critical components in any successful special education program: 1) Adequate funding and, 2) Effective programming. In 2007, NJSBA commissioned a study to address the "actual costs" of special education in New Jersey. The study used an empirical approach to examine trends affecting the cost and delivery of special education programs and services. It found that local, state and federal special education expenditures in New Jersey totaled \$3.3 billion. The main cost-drivers were out-of-district placements, programs for students with autism, transportation, related services, and resource programs. The study also identified other cost-drivers, including high classification rates, exclusionary placements, and impediments to shared services.

In 2013, to address the continuing pressure that special education places on local district budgets, the NJSBA embarked on a second major study with the goal to reduce special education costs to local school districts without diminishing the quality of needed services. After the yearlong study, the NJSBA found that there was a dire need to develop strategies that will maintain quality services, without negatively affecting resources for general education programming.

That 2014 report, entitled "Special Education: A Service, Not a Place," made 20 recommendations that address early intervention, literacy, shared services, changes in state and federal aid, alternative funding, and training of educators and school board members. Those recommendations included the following:

Early intervention—The state should develop a multi-tiered system of supports, including programs such as Response to Intervention, Intervention and Referral Services and Positive Behavioral Supports, to identify students with learning needs at an early stage and implement strategies. The process should include ongoing assessment and evaluation. Such early intervention in the general education classroom would improve student outcomes and enable schools to avoid over-classifying children as requiring special education. Additionally, the NJSBA found that, through educationally sound strategies, schools could reduce costs. The NJSBA is pleased to note that in 2016, this Legislature passed unanimously and the Governor enacted a law that establishes a Response to Intervention framework within the NJDOE, which supports and encourages its use by school districts to promote the achievement of all students. *N.J.S.A. 18A:6-135.*

Shared services—While many school districts share some special education services, such as transportation, the task force recommends that the New Jersey Department of Education and local school districts explore a voluntary Regionalized Special Education Model/Shared Services Model for special education and related services. For example, regional or county-level child study teams could evaluate students and then turn over the findings to the local school district for implementation. Such a strategy could free up resources locally for classroom-level programs.

Funding—In its 2014 report, NJSBA recommended restructuring state special education aid to support programs that improve student outcomes; ensuring adequate Extraordinary Special Education Cost Aid, which helps fund out-of-district placement for severely disabled pupils; and providing flexibility in the use of federal special education funding so that it could be applied to supplemental literacy and math programs in inclusive settings. Research shows that when reading improves, classification rates drop.

Funding continues to be one of the most vexing problems within special education. First, the federal government has not yet delivered on its promises of funding. When the Individuals with Disabilities Education Act was first enacted in 1975, Congress sought to cover 40% of the national average per pupil expenditure (APPE) multiplied by the number of children with disabilities served under IDEA in each state. However, current funding levels place that percentage at around 17%. This represents less than half of the promised amount from the federal government.

At the state level, special education funding is part of the School Funding Reform Act (SFRA). Under the SFRA, special education dollars are based, in part, on the assumption that the classification rate in any district is 14.69%. If your actual classification rate is higher, the amount you receive will still be based, in part, on that statutorily set lower rate. This leaves the local district having to make up the difference through local tax levies; no easy task given the 2 % hard cap in which districts must operate. This sometimes becomes a situation in which a district may be penalized for its success. It may, for instance, have a very good in-district autism program for which parents move to the district, but in doing so, drive-up the district's percentage of classified students, causing it to receive less funding for its special education programs.

Training—In its recommendations on training, the NJSBA addressed teacher preparation programs, professional development for child study teams and other professionals, and programming for board of education members. The state’s teacher preparation programs should focus on the inclusive classroom with training in adapting curriculum, instruction and assessment to meet the needs of all learners. Such training would reduce IEP-related conflicts, develop a culture of trust and cooperation among school districts, parents and students, and meet the needs of all students in an inclusive setting. NJSBA is pleased to have been a supporter of S-1474, the bill that was enacted into law in February 2017 that requires teacher preparation programs for the instructional certificate to include a certain amount of instruction or clinical experience in special education.

Burden of proof—In 2008, *N.J.S.A.* 18A:46-1.1 was enacted which places the burden of proof and burden of production on the school district in all due process proceedings, no matter which party has actually brought the complaint forward. In most other types of litigation, the party bringing the complaint has the burden of proof and production. Statutorily keeping the burden on the school district at all times drives up the cost of litigation and the number of due process cases. This means that limited taxpayer dollars are being spent not on special education programming to help students, but on lawyers and other experts.

To read all of the recommendations in the 2014 NJSBA report, please go to <https://www.njsba.org/news-information/research/njsba-task-force-on-special-education-report-2014/>

Since that report, there have been other special education issues that have arisen. One of these is the issue of assessment of special education students. Under current federal and state law, all students must take the end-of-year standardized assessment. In NJ, that is the PARCC. While a special education student may take the PARCC with any appropriate accommodations, they must take the PARCC that matches their chronological grade level. There is an alternative test, called the Dynamic Learning Maps for those who have the most severe learning disabilities, but the criteria to be able to take the DLM are overly restrictive, leaving some students no alternative but to take the PARCC at grade level despite the fact that they cannot do grade level work. In those instances, NJSBA questions whether this represents the best use of education dollars and whether testing under such circumstances yields measurable data that tells educators anything about the effectiveness of their educational programming.

In conclusion, the NJSBA urges the Joint Committee on the Public Schools to look at the following:

1. Funding—The current School Funding Reform Act is not currently being fully funded. Further, the manner in which the SFRA funds special education is not truly based on the numbers and the needs of the special education students, straining district budgets and putting the needs of the special education student against those of the general education student. The mechanics of the SFRA need to be re-evaluated to better serve the special needs student. Before the 2% hard cap, there was the ability for a district to apply for a waiver to the then 4% cap where costs exceeded the cap.

2. Litigation—While NJSBA understands the circumstances that led to the burden of proof and production being placed on school districts, such a move unnecessarily drives up costs for school districts and the students they serve. The Joint Committee should look at other less costly ways to provide parents and students with the protections that they are seeking without shifting the burden in these cases to school districts.
3. Assessment—The Joint Committee should look at alternative ways of assessing the special needs student so that each student is being assessed in accordance with the educational goals outlined in their individual education plan, not based on their chronological grade level. In this manner, testing dollars will be used more effectively measuring growth of the special needs student.

The NJSBA thanks you for the opportunity to address the Joint Committee on the Public Schools. The NJSBA stands ready to help you with any further information you may need as you continue your inquiry.



Comments Before the Joint Committee on Public Schools

March 22, 2017

Thank you Senator Rice, Assemblywoman Jasey and other members of this committee, for providing Education Law Center with the opportunity to share our concerns about special education and serving New Jersey students with disabilities.

Please note that ELC is a member of the New Jersey Coalition for Special Education Funding and supports the comments submitted by that group today. While we will highlight one issue regarding special education funding in our own testimony, we would also like to bring several other pressing issues to this Committee's attention.

First, as the Legislature considers public school funding, we think it is critical to re-examine special education funding, and to address problems arising from the census-based methodology that was enacted by the School Funding Reform Act of 2008 ("SFRA"). We recommend building off the work that has already been done to examine the issue of methodology.

In 2011, the New Jersey Department of Education contracted with an independent research firm, Augenblick, Palaich, and Associates (APA), to analyze the change in New Jersey's special education funding system implemented by the SFRA. APA's October 2011 report, "Analysis of New Jersey's Census-based Special Education Funding System," found "clear differences in the percentages and types of students served in different districts across the state," as well as inconsistent distribution of higher cost special education students across the state, and further found that none of these differences was taken into account by the census-based funding system. From the existing data, APA concluded that New Jersey might need to return to funding "based on the actual enrollment of special education students in districts", with "some differentiation of funding for higher cost students before the extraordinary aid threshold is reached."

APA's recommendation for moving forward was that New Jersey fully fund the current special education funding system, while collecting and analyzing improved data to ensure data-driven decisions about the method and amount of funding. As APA noted, "a fully implemented system will allow for better comparisons of expenditure data," as the State analyzes where special education students are funded and served and the costs of serving

different types of special education students.

Whether or not APA's ultimate recommendation is the path chosen for moving forward, it is critical that the State fully identify and address "the inequities created by the census based funding," and ELC asks this Committee to make that a priority.

Moving on to other issues, we have selected several critical problems that we think are widespread and need to be addressed through state policy and regulations:

1. Insufficient numbers of teachers in our public schools qualified to teach struggling readers

ELC has seen cases over and over again in which the needs of students with dyslexia, as well as other struggling readers, are not being appropriately met by their public school district. In a small percentage of fortunate cases, parents have the wherewithal to resort to self-help, obtaining outside evaluations, hiring tutors, placing their children in private schools, and/or retaining experts and attorneys. In many other cases, help comes too little and too late, as countless students who could have been taught to read with appropriate instruction, experience school failure, develop emotional or behavioral problems, and tune out or drop out of school, at great personal and societal cost.

Our experience, shared by other special education practitioners, has been that our state has an inadequate supply of teachers who are appropriately trained to teach reading and writing to students who have difficulty learning to read and write. As set forth by Dr. Louisa Moats in her influential 1999 book of the same name, "Teaching Reading Is Rocket Science." Specific knowledge and training is essential to be an effective teacher of reading to the 15-20% of children who have difficulty learning to read. Despite some recent improvements in New Jersey laws affecting students with dyslexia, the knowledge and training to be an effective teacher of reading to students with reading disabilities is neither systematically taught to, nor required of, New Jersey teachers.

2. Violations of the 45-day federal timeline for special education hearing decisions

Severe resource shortages at the Office of Administrative Law have adversely impacted the timely completion of cases involving state agencies that are required to be litigated there. Although federal law requires that special education hearing decisions be issued within 45 days of the filing of a complaint, research conducted by the New Jersey Special Education Practitioners ("NJSEP") group (facilitated by ELC) demonstrates that this is often not the case. Reviewing OAL decisions from 2012-2015,

NJSEP found that over 1/3 of special education cases take more than one year to be concluded, that delays are increasing, and that the most involved cases are the most affected. Since special education cases are given priority due to the federal time line, decisions in other types of education cases are also delayed. Not infrequently, decisions regarding a child's education are not rendered in time to impact the school year in which a legal dispute arises.

Administrative Law Judges share the concern of practitioners about delays in getting cases heard at OAL and have been meeting with attorneys and implementing practice changes in an effort to maximize efficiency. However, OAL has no control over the primary cause of the delays, namely, the insufficient number of Administrative Law Judges to handle the number of cases filed, especially those with knowledge and background in the practice of education law.

The importance of adequate resources for OAL cannot be overstated. Unlike ordinary civil disputes, the cases that come before ALJs all involve state agencies and often implicate important public policy decisions. As examples, OAL was the trier of fact in the landmark Abbott v. Burke school funding cases, in the groundbreaking P.H. v. Bergenfield alternative education cases, as well as in many standard-setting special education cases such as Oberti v. Board of Educ. Of Clementon

(least restrictive environment) and W.B. v. Matula (child find) -- all litigation which has resulted in a substantial impact on state education policy.

ELC urges the Legislature to ensure that OAL has necessary resources to adequately fulfill its important governmental function. Filling vacant positions at OAL and maintaining a salary structure that will attract experienced practitioners are two key steps that will contribute to decision-making that is both high quality and timely, thereby benefitting all parties in administrative cases and better serving the public interest.

3. Failure of charter schools to meet the needs of students with disabilities, especially those with behavioral challenges and more significant disabilities

New Jersey charter schools are not serving students with behavioral challenges and those with more significant disabilities, such as autism and cognitive/intellectual disabilities, in percentages comparable to traditional public school districts. Of concern is the fact that many charter schools do not have the capacity to serve such students. We have seen examples under Newark's one enrollment policy, where a student with disabilities has been enrolled in a charter school that is completely unable to meet the student's needs.

In those cases, after a period during which the child's needs have not been met, parents have either felt compelled to return their child to a district school or have succeeded in obtaining an out-of-district program, which, under state law, is provided at the district's, not the charter school's, expense. Either scenario results in yet another school change for the student with a disability, and places another burden on an already financially-strapped school district.

4. Impediments to participation in the special education process by Limited English Proficient students and parents

According to NJDOE data, over twenty percent of New Jersey's public school students come from homes in which a language other than English is spoken. NJDOE, "First Discussion Paper: N.J.A.C. 6A:15, Bilingual Education" (June 3, 2015), at

5. In ELC's experience, special education meetings present a persistent area of insufficient and inadequately translated information for LEP parents. Without translations of IEPs and other essential special education documents, limited English proficient ("LEP") parents are unable to participate fully in the special education process. This barrier to parental participation violates the rights of parents and students, and impedes students' success in school.

ELC recommends that the Legislature establish standards and procedures for the adequate translation of special education documents including IEPs and evaluations, and high-quality oral interpretation at meetings. We believe these changes are needed in order to comply with mandates in federal and state law that parents be fully informed in their native language of all information relevant to activities for which their consent is sought, and that parents be afforded meaningful participation in the development of their child's special education program.

Finally, we would like to bring your attention to a current crisis in the delivery of special education services in the state-operated Paterson public school district. ELC has recently filed two requests for complaint investigation in response to multiple parent and staff reports about special education students who are not receiving services required by their Individualized Education Programs. In some cases, students are not receiving special education services, due to the shortage of certified special education teachers, and, in other cases, students are not receiving related services, such as speech/language therapy, occupational therapy, or physical therapy, due to shortages among those professional staff. This interruption of services appears to be happening throughout the

district, affecting hundreds, if not thousands, of students, and requires a speedy resolution. To the extent that resources are required to solve the problem, we hope that the Legislature will ensure that the needs of the district's children are met.

If we can provide you with additional information about any of these issues, please do not hesitate to let us know. Thank you for your consideration.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Elizabeth Athos". The signature is written in black ink and is positioned above the typed name.

Elizabeth Athos, Esq.



**Testimony Presented to Joint Committee on the Public Schools
Special Education Hearing
March 22, 2017**

Good morning, Chairman Rice, Chairwoman Jasey and members of the Joint Committee in the Public Schools. I am Judy Savage and it a pleasure to speak to you today about special education on behalf of the NJ Joint Council of County Special Services School Districts.

The eight county special services school districts – located in Atlantic, Bergen, Burlington, Cape May, Gloucester, Mercer, Salem and Warren counties – provide direct educational placements for almost 4,000 students with very severe disabilities.

And they serve many more students through high-quality, cost-effective shared services that help local districts meet the needs of their own students. These include services like occupational and physical therapy, services for deaf and hard of hearing students, assistive technology, vocational and skills training, transition to adulthood, and non-public school services. Small and mid-sized districts need to provide these services, but may not have need for full-time staff, so it makes sense for them to purchase only the services they need from a trusted public school partner at the county level.

Increasingly, the special services districts also partner with local districts to provide programs in local schools, enabling districts to access the professional expertise necessary to meet students' specialized needs locally.

The county-based special education programs are a critical part of the continuum of services for students with significant disabilities in New Jersey. While it is always a goal to serve students locally with options for inclusion with typically developing peers, each students needs – and best educational placement – are unique.

For students with severe autism, moderate to severe intellectual disabilities, emotional disabilities, severe medical disabilities and other low-incident, hard-to-serve needs, the public school programs at the county special services school districts are the "least restrictive environment." Having access to specialized programs and facilities, individualized instruction, and a wide range of therapies

and services in a nearby public school is essentially an extension of the local district, and state policy should encourage districts to make use of these placement opportunities.

As you are hearing today from many speakers, local districts are being strangled by the effects of stagnant state funding and the 2% tax levy cap. Each year it becomes more and more difficult for them to meet the needs of all students – those with special needs and those in general education programs.

In an effort to meet student needs at a lower cost, districts have reduced their outside placements and now serve as many students as they can in their own district programs.

As a result, county special services districts receive fewer students, and all of those have more intense needs that demand more, and higher cost, services. This is pushing up the cost per pupil at special services districts. And even though they know sending students to these programs is the best and most cost-efficient way to meet their needs, cash-strapped districts struggle to pay the tuition costs for their high-needs students.

We know that the Legislature is well aware of the increasing negative impacts of many years of flat funding for school districts, and this is approaching a crisis for special education. It must also be recognized that the census-based special education provision in SFRA funds every district at the state average cost for special education, without regard to the actual number of special needs students or the intensity of their needs. Districts with even a few students with very severe needs may be dramatically underfunded by this approach.

One immediate solution we propose is for the Legislature to provide some limited relief from the tax levy cap for districts that send students to county special services school districts. Putting tuition for these public special education placements outside the cap would enable districts to meet these specialized needs without having to cut other programs and services.

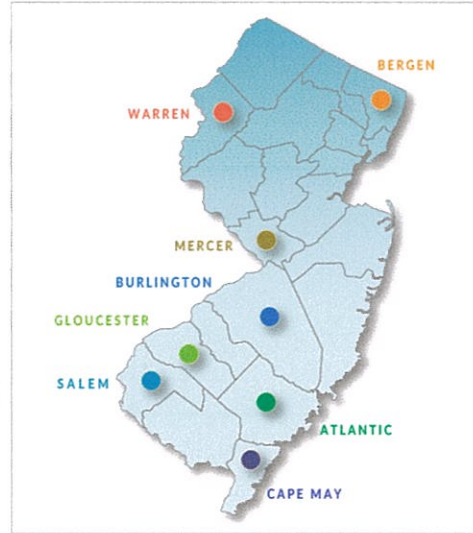
Thank you for the opportunity to speak today about the important role of county special services school districts in providing programs and cost-effective shared-services to help school districts meeting the needs of students with disabilities.

The 8 Special Services Districts in New Jersey

- Atlantic
- Bergen
- Burlington
- Cape May
- Gloucester
- Mercer
- Salem
- Warren

The eight county supported districts provide a wide range of educational services for students with low incidence disabilities.

Full-time educational placements for about **3900** of the most severely disabled students.



County Special Services School District Programs

Major Programs:

- Autism
- Moderate to Severe Intellectually Disabled
- Multiple Disabilities
- Emotional Disabilities
- Preschool Disabilities
- Early Intervention
- Auditory Impairments
- Alternative High School
- Severe Medical Disabilities
- Vocational training/life skills/job coaching



Special Services Districts can work with districts to create programming for students based on need.

Shared Services for Local Districts

- Child Study Team
- Occupational Therapy
- Physical Therapy
- Speech/Language Therapy
- Assistive Technology
- Transportation
- Services for deaf/hard of hearing
- Augmentative Communication
- Transition services/job coaching
- Vocational/life skills training
- Structured learning (SLE)
- Substance Awareness Coordinator
- Special Child Health Services
- Autism consultation
- Inclusion services
- Center for Family Guidance
- Chapter 192/193
- Other nonpublic school services
- Home instruction
- Staff development
- Juvenile Detention Programs
- Technology Services
- Grant writing

Why Special Services?

- Cost Effective for Districts
- Collaborative Approach
- Experienced/Qualified Staffing
- Specialized needs can often be met through existing programming





Gerard M. Thiers
Executive Director

TO: Honorable Members of the Joint Committee on Public Schools
FROM: ^{GMT} Gerard M. Thiers, Executive Director
RE: School Funding Formula; Private School Fiscal Code
DATE: March 22, 2017

Thank you for the opportunity to speak to you today. ASAH is a nonprofit state association for private special education schools in New Jersey. Our members operate 150 state-approved schools serving over 10,000 students with complex disabilities.

Private special education plays an important role in New Jersey; we serve students who are placed by their local school districts when no other program can meet the needs of the child. Under federal law, the Individuals with Disabilities Education Act, private schools receive tuition directly from the sending school district so students are served at no cost to families. Tuition rates are set annually by the New Jersey Department of Education.

The private special education community has many concerns about the School Funding Reform Act as it relates to special education. First, the law largely uses special education aid for wealth equalization purposes. It calls for a large portion of special education aid – 67 percent – to be adjusted for local wealth, with school boards in more affluent communities receiving a smaller percentage of the available aid than school boards in less wealthy communities. Since all districts are required by federal and state laws to provide students with disabilities an appropriate education in the least restrictive environment, the SFRA unfairly discriminates against wealthier communities which have to provide the same level of support to their students in special education. Moreover, because of the equalization formula, the actual amount of special education aid being distributed has actually gone down while there has been continued growth of special education costs to deliver appropriate programs.

Second, the law calculates special education aid according to a census model, which has been shown to be deeply flawed. The calculation is based on a statewide average excess cost (roughly \$15,000) multiplied by the statewide average rate of classification, which is roughly 14.8 percent of the student body. Regardless of the actual numbers of students with disabilities identified by a district, every district receives special education aid for roughly 14.8 percent of their total student enrollment with adjustments for wealth equalization as mentioned above. This system, as noted by the New Jersey Special Education Task Force in 2015, aggravates the “crowding out” effect in school budgets by pitting special education student needs against general education student needs. It has also failed to reduce the proportion of classified students in New Jersey districts, which is one of the underlying goals of census-based formulas.

The law also modified the system for extraordinary cost reimbursement. This aid is available to sending school districts for special education students for whom the cost of providing services is atypical. The system has different funding levels based on a student’s placement. These are:

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- For placements in an in-district program with non-disabled peers, whether operated by a public or private school, the sending district will receive up to 90 percent of the cost of *direct instruction and support* in excess of \$45,000;
- For placements in a publicly operated separate program, such as a county special services district, educational services commission or a jointure commission, the sending district will receive up to 75 percent of the cost of *direct instruction and support* in excess of \$45,000;
- For placements in a separate private school for students with disabilities, up to 75 percent of the full tuition cost in excess of \$60,000.

Clearly this formula is not *placement neutral* as required by the Federal Individuals with Disabilities Education Act (IDEA). Districts that place students in private schools are at a disadvantage and are not eligible for the same level of extraordinary aid as districts that place students in public programs.

An effective school aid funding formula should: 1) not use special education aid for wealth equalization purposes; 2) provide additional cost factors based on the actual numbers of special education students in each district (head count) rather than a census formula; and 3) equalize funding for all public special education students regardless of whether they are placed in public or private programs.

I would like to end with a comment about sweeping new fiscal regulations that the State Department of Education has proposed for private schools for the disabled. In 2015 representatives of ASAH met with the Department and discussed rule changes that would improve fiscal accountability and transparency. We agreed on 18 items that covered issues such as administrative costs, maximum salaries and legal costs. However, in November, 2016, the Department added more than two dozen new items to the proposal given to the State Board that were never discussed; some of the agreed upon items were changed.

Here is one example. The NJDOE has proposed a number of new rules about staff training and salaries that will make it impossible for private schools to recruit, retain, and train the related services professionals that students need. Our schools are already losing experienced therapists to agencies which offer much higher salaries. To avoid the loss of qualified staff and to meet the requirements of each student's IEP, some schools have hired therapists at rates that exceed the allowable maximum. One school hired a speech therapist who specializes in severe feeding and swallowing issues to work with an 11 year old student. The school paid the therapist \$135 per hour, well above the allowable cap of \$74 per hour, simply to provide the services in the child's IEP. The school must use fundraising dollars to cover costs that are clearly part of the educational program – and this is just one child among the thousands that we serve.

The issue is not living with financial constraints – the schools are currently doing that – but rather the higher requirements and greater restrictions that the Department is trying to place on private schools in comparison to public programs and other general contractors. The rules will skew the funding system to the point that many private schools will struggle to keep their doors open, let alone provide quality services. Families and children will suffer as a result.

Thanks you for your consideration in this matter.

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The Joint Committee on the Public Schools
March 22, 2017

Topic: Educating students with disabilities
Presenter: David Schwartz, Chief School Administrator

Thank you distinguished members of the Joint Committee on the Public Schools, it is an honor and a pleasure to speak before you. The subject of the public schools is the most important issue that affects all New Jersey residents and taxpayers. The quality of education impacts home values, the efficiency impacts property taxes and the philosophy impacts the future of our kids lives and the State's vibrancy.

The task at hand for this Joint Committee is monumental and I am hopeful that my testimony today will help the Committee change the status quo.

In my line of work, identifying the problem is the first step in achieving better outcomes. Briefly, my professional background is very unique and highly specialized. I am a certified Principal, Superintendent and a School Business Administrator. Previously, I was a local reporter for the Star-Ledger and a Media Specialist/Press Secretary for the New Jersey General Assembly.

I have spent twenty-years in special education, and since 2009 I have been running an approved private school for disabled students. Because of my background, I believe I look through the lens at education differently than most people and I'm also inclined to think completely out of the box.

It's with this unconventional approach that I offer four points to consider today. The first point will deal with the legal constraints for implementing IEPs in public schools. The second point will address how to effectively use AchieveNJ to ensure higher quality teachers and programs. The third point will address how salary caps can benefit schools and taxpayers. And lastly, my fourth point will address how we can truly support teacher and school leader professional practice and growth.

I offer these points because I don't believe that New Jersey's education system is beyond the point of repair, but I hope that after my comments you can see that the public is not fully aware of the systemic problems that currently prevent our system from functioning.

Positively, many of our students do receive a high quality education, most of our certified personnel are highly educated and have a lot of potential, and we have a Governor that is very supportive of positive change.

It is due to these positive attributes that there is tremendous hope that the Joint Committee will be very successful in re-creating a system that works for all students.

My first point today deals with the legal responsibility and constraint placed on child study teams and Directors of Special Education. In accordance with N.J.A.C. 6A:14-4.3, which outlines the mandated program options, Exhibit A, once an IEP has been written and approved, the district board of education is solely responsible to ensure full compliance. And under this code statute, the board of education is supposed to ensure that a student with disabilities shall be educated in the least

restrictive environment. If a student with a disability cannot be satisfactorily educated in the regular education setting, section B states that a full continuum of alternative placements shall be available to meet the needs of the student. And there are 12 options outlined.

The local board of education trusts that the Director of special services will meet these requirements, but the director has not been given any supervisory authority over district personnel. The reality is that a teacher, principal or supervisor can elect to follow state code because there is no supervisory consequence to them for not implementing the legally mandated program. And there are district personnel that have not read the IEPs, or have not followed the recommendations by the child study teams in the regular education classroom.

There is data to support this issue. Exhibit B, shows according to the Department of Education's latest published data from the 2015 school year only 6.95% of classified students ages 6-21 were placed in a separate school setting, which is down 2.3% from data collected in 2007.

But the percentage of students that are in the least restrictive environment ages 6-21 is at approximately 26% in 2015, which is a decrease of 19% from the data collected in 2007.

This data is glaring and cannot be ignored. The reality is that more and more students are placed in self-contained classrooms in the local school and there is no evidence to prove that there is a transition to a least restrictive environment. In fact, the Department does not track individual students or aggregate transition data, which means that if a student were placed in a self-contained setting away from non-disabled peers, they could potentially remain segregated for a period of ten years without any oversight or agency knowing about it.

But according to state code, the board of education is expected to ensure against this practice. I recommend an easy remedy, which would elevate the Director to Assistant Superintendent. Because at the central office level, an Assistant Superintendent for Special Education could direct any district personnel with real supervisory authority. This means that Principals, supervisors and teachers would be required to follow the directives of their now Superintendent of Special Education. This one administrative change could unlock a major in-district issue and alleviate programmatic as well as budgetary issues.

This is a very critical issue because the true cost of self-contained classrooms in-district is hidden from public view because of simple accounting principles. But under state code, a self-contained classroom has very strict class size restrictions and staffing requirements, whereas an "inclusion" classroom does not have the same restrictions.

The reality is that an "inclusion" classroom can effectively educate on average 25 students with one dual-certified teacher and one or two trained special education paraprofessionals. But a self-contained classroom can have a maximum of 12 students, but requires a dual-certified teacher and at least one trained special education paraprofessional. Simple economies of scale tell us that the inclusion classroom is more cost effective than a self-contained classroom, in addition to the legal compliance issue of meeting LRE.

Effective inclusion classrooms need to be the goal for every school district, but this leads into the second point, how to use AchieveNJ more effectively to increase educator accountability and effectiveness.

More students are placed in self-contained classrooms because of the simple fact that the teacher effectiveness and skill capacity is not at a high enough level to educate students in an inclusion setting. Personally, I can attest to how important training and direct development is critical to the skills of each teacher and my staff is required to receive approximately 70 hours of professional development on-campus. For comparison sake, the most effective public schools offer approximately 25 hours at most in one school year.

The capacity of staff is at the heart of the special education, the cost effectiveness and the evaluation and supervisory issues. This is where the public has been led to believe that tenure is the culprit and I don't agree with that conclusion. What is a huge unspoken problem is that Principals and supervisors cannot adequately and effectively evaluate and observe the staff in its buildings, if there is no consequence for teacher or school leaders who receive "ineffective" or "partially ineffective" ratings.

In addition, Principals and supervisors should not be expected to manage "ineffective" and "partially ineffective" staff. The amount of time wasted supervising, monitoring and managing staff that are not at least "effective" is beyond cost.

But AchieveNJ is a good tool for evaluation and if used properly can support teacher growth and development, instead of being used as a consequence.

If we think completely out-of-the box and for a minute not think about politics, egos, how schools have been run for 100 years, but just think about the most effective teaching and the quality of education we want our children to receive, my recommendations aren't too far-fetched.

We need to agree on some key points. First there should be no place, no job, no excuse for "ineffective" teachers or school leaders. Second, the education of our children is too important to waste time on people who cannot meet minimum standards for a profession.

In order to raise our states whole education system to a level of envy, we need to elevate teachers back to a profession. We need to restore the public trust, respect and due appreciation to teachers and school leaders who come to work everyday to benefit our society.

Without quality schools, this is the Fall of Roman Empire and the end of the Great America we have come to love and trust. We cannot waste any more time debating whose to blame for the current state of affairs. We just need to roll up our sleeves and get to work. To that end, the NJEA must be included in the restoration of the public trust with the teaching profession.

But with renewed leadership comes renewed accountability, and the NJEA should be responsible for creating strict professional, ethical and code of conduct standards for its members. If under this new professional guideline enforced by the NJEA, a teacher or school leader who violates the professional, ethical or code of conduct standards, the NJEA would be expected by the Department of Education to discipline its own members and remove them immediately from service.

The Department of Education could create a statewide database and registry for all personnel it certifies, which would be accessible by every school district through the DOENET homeroom, which would list any and all violations, thus ensuring that bad apples never move from one district to another.

In addition, if the NJEA removed a member from service, it would effectively void the contract with that personnel and relieve the board of education of all contractual obligations including salary and benefits.

The local tax payer should not foot the bill for staff that cannot meet rigorous standards.

The board of education still needs procedural safeguards and recourse if the NJEA refused to act swiftly in any individual case by reporting the issue to the Department of Education. If the NJEA was found negligent, the NJEA would be subject to fines and penalties, which would offset the board of education's costs for staff that do not meet the standards.

This new system of accountability would reduce the cost burden placed on local districts currently if one of their personnel is "ineffective" or conducts themselves in an unprofessional or unethical manner. The cost of bad practice and unprofessional and unethical behavior should be on the NJEA and its specific member.

This new proposed system would enhance the NJEA's standing, which leads into the third point dealing with salary caps. Overall, Governor Christie understood that public servants should not earn salaries that cannot be sustained through tax dollars. And his comments and purpose for a salary cap on Superintendents was understandable, even if mis-directed.

I think the public has spoken on this topic, there should be salary caps on public employees, including teachers and school leaders. But the caps need to be reasonable and fair based on the job duties of the people working in education. Capping Superintendent salaries at \$135,000 is not reasonable or fair given that the job is 12-months and effectively on-call 24 hours a day. In addition, Superintendents are placed in charge of multi-million dollar operations with complex legal requirements and regulatory challenges.

But the biggest issue with the Superintendent cap was that it did not make any salary separation between teachers and administrators, which has hurt overall school quality.

I am hoping that the Department of Education can work effectively with the NJEA to create a statewide salary guide and cap that creates a reasonable starting salary for novice teachers and caps teachers at a salary level under supervisors and Principals.

If novice teachers earn less than \$40,000 statewide, school districts will have the appropriate funds to pay for health benefits for all its staff. In addition, a reasonable salary guide and cap will ensure that less personnel are laid-off, school budgets can be lowered to provide property tax relief to homeowners and the negative labor negotiation table will be eliminated.

I want to conclude with my fourth and final point, which supports teacher and school leader professional growth and training.

All of my points address how to create a more positive school system for taxpayers and in school for teachers, school leaders and students.

My hope is to bring back a more positive respect to the teaching profession, but teachers and school leaders need more professional training and development than most other professions. This cannot be overlooked, but luckily New Jersey has some of the nation's top public colleges and Universities for education research and development.

My proposal would be two-fold, first for novice teachers and second for veteran staff.

Currently, novice teachers are required to be enrolled in an in-district induction and mentoring program that covers two consecutive years of training, supervision and development. On paper, this is a great practice and should promote true growth and professional practice.

There is a huge gap between practice and theory. Instead of placing the responsibility back on the local school, this is where the Department of Education in partnership with the public colleges and Universities should create mentoring classes for novice teachers. For the first two years, novice teachers and school leaders would be required to attend weekly classes for 90-minutes to cover the NJ Teaching standards and also participate in discussion and peer mentoring about job-embedded issues.

For veteran staff, they would be required to attend monthly classes for 2-hours and complete one action research project per school year. Placing the development and training of New Jersey's educators in the capable hands of higher education is a much smarter idea than trying to mandate local school's to take on this duty on their own.

Better teacher training and support will decrease the number of novice teachers that leave the profession and also increase the quality of teaching in the classroom. As a by-product, more students with disabilities will be able to be educated in the least restrictive environment.

Thank you for your patience and due consideration of my comments. I have lived in New Jersey my whole life and I am thankful for the opportunity to share with you my perspective and expertise.

6A:14-4.3 Program options

- (a) All students shall be considered for placement in the general education class with supplementary aids and services including, but not limited to, the following:
 - 1. Curricular or instructional modifications or specialized instructional strategies;
 - 2. Assistive technology devices and services as defined in N.J.A.C. 6A:14-1.3;
 - 3. Teacher aides;
 - 4. Related services;
 - 5. Integrated therapies;
 - 6. Consultation services; and
 - 7. In-class resource programs.

- (b) If it is determined that a student with a disability cannot remain in the general education setting with supplementary aids and services for all or a portion of the school day, a full continuum of alternative placements as set forth below shall be available to meet the needs of the student. Alternative educational program options include placement in the following:
 - 1. Single subject resource programs outside the general education class;
 - 2. A special class program in the student's local school district;
 - 3. A special education program in another local school district;
 - 4. A special education program in a vocational and technical school;
 - 5. A special education program in the following settings:
 - i. A county special services school district;
 - ii. An educational services commission;
 - iii. A jointure commission; and
 - iv. A New Jersey approved private school for students with disabilities or an out-of-State school for students with disabilities in the continental United States approved by the department of education in the state where the school is located;

6. A program operated by a department of New Jersey State government;
7. A community rehabilitation program;
8. A program in a hospital, convalescent center or other medical institution;
9. Individual instruction at home or in other appropriate facilities, with the prior written notice to the Department of Education through its county office;
10. An accredited nonpublic school which is not specifically approved for the education of students with disabilities according to N.J.A.C. 6A:14-6.5;
11. Instruction in other appropriate settings according to N.J.A.C. 6A:14-1.1(d); and
12. An early intervention program (which is under contract with the Department of Health and Senior Services) in which the child has been enrolled for the balance of the school year in which the child turns age three.

EXHIBIT B

White	7114	270	348	7732
Hispanic/Latino	3053	95	171	3319
Black or African American	3731	132	128	3991
Asian	727	-	-	766
Two or more races	182	-	-	190
Native Hawaiian or Other Pacific Islander	27	0	0	27
American Indian or Alaska Native	21	0	-	23
TOTAL	14855	508	685	16048

White	3.33	0.13	0.16	3.62
Hispanic/Latino	1.43	0.04	0.08	1.55
Black or African American	1.75	0.06	0.06	1.87
Asian	0.34	-	-	0.36
Two or more races	0.09	-	-	0.09
Native Hawaiian or Other Pacific Islander	0.01	0.00	0.00	0.01
American Indian or Alaska Native	0.01	0.00	-	0.01
TOTAL	6.95	0.24	0.32	7.51

Female	4307	131	271	4709
Male	10548	377	414	11339
TOTAL	14855	508	685	16048

Female	2.02	0.06	0.13	2.20
Male	4.94	0.18	0.19	5.31
TOTAL	6.95	0.24	0.32	7.51

99x

New Jersey Department of Education
 Office of Special Education Programs
Number of Classified Students by Placement Cat. and Race, Ages 6-21
 (Districts, Charter Schools, State Agencies)
 As of December 1, 2007

Placement Category	Native	Asian	Black	Hispanic	White	Total	%
80% or more of the Sch. Day	154	3,393	14,188	15,006	64,247	96,988	45.02%
Between 40-79% of the Sch. Day	136	1,462	13,555	12,120	33,426	60,699	28.17%
Less than 40% of the Sch. Day	49	1,067	11,574	9,043	13,275	35,008	16.25%
Separate Public School	5	341	2,545	1,275	3,145	7,311	3.39%
Private Day School	29	365	3,747	1,969	6,669	12,779	5.93%
Private Residential School	-	13	133	31	184	361	0.17%
Home Instruction	5	21	306	213	544	1,089	0.51%
Public Residential Facility	-	13	81	70	81	245	0.11%
Correctional Facility	-	1	658	174	131	964	0.45%
Total	378	6,676	46,787	39,901	121,702	215,444	100.00%

100X



New Jersey Speech-Hearing Association-NJSHA

The Joint Committee on the Public Schools Meeting—March 22, 2017

TOPIC: *Concerns and recommendations to ensure students with disabilities receive a thorough and efficient education through the delivery of programs and services.*

Place: County College of Morris, 214 Center Grove Road, Randolph, NJ 07869-2086 Student Community Center, the Davidson Rooms Time: 10:00 am
Contact: *Rebecca Sapp, Executive Director*
(609) 847-3365
rsapp@njleg.org

The New Jersey Speech-Language-Hearing Association (NJSHA) thanks you for the opportunity to share our concerns and offer recommendations for public school students who have speech and language disabilities. NJSHA has been representing speech-language pathologists (SLPs) for over 60 years, the majority of whom have been working in schools. We have seen the roles and responsibilities of school-based speech-language pathologists, known as speech-language specialists (SLSs) in New Jersey, evolve dramatically, especially with the inception of the Individuals with Disabilities Education Act (IDEA). For that reason, before we express our specific concerns and recommendations, we feel we should provide you with some background information .

First, it is important to note that SLSs truly have become integral members of their school communities. Yes; they still evaluate students; prepare, provide, and document therapy services, now including Medicaid reimbursement forms; and attend a multitude of special education meetings for speech or language impaired children. However, today they also serve on school-wide curriculum and literacy teams; participate in their schools' special events and activities; help identify students potentially at risk for communication problems; provide information and collaborate with parents, teachers, and other professionals on a daily basis; supervise graduate student interns; and advocate for teaching practices to enhance receptive and expressive language for all students.

Years ago, the majority of students seen by an SLS predominantly were those with speech impairments (e.g., articulation or speech-sound disorders, stuttering, or voice problems such as hoarseness or nasality). Students seen for language impairments were mainly those in self-contained classes for children with severe disabilities such as autism, cerebral palsy, Down's Syndrome, and other disabilities which caused them to have little, if any, communication skills.

Today, those same children still receive speech-language services. Nevertheless, the speech-language specialist's scope has broadened significantly in the area of language. In the October 2015 New Jersey Department of Education (NJDOE) data report of the number of children (ages 6-21) receiving special education services, 21.10 percent fell under the IDEA category Speech or Language Impairment.¹ This data is congruent with the report issued by the USDOE for the 2013-2014 school year.² However, this data was used to identify the total number of children receiving special education services based on their

primary disabilities. Consequently, it is believed that the child-count approach in the area of speech-language impairment drastically underestimates the numbers of children actually receiving services from speech language specialists. This is because it does not include those children who have other primary disabilities and receive speech-language therapy as a related service.

Under IDEA and the New Jersey Special Education Code (N.J.A.C. 6A:14), speech-language services can be provided either under the stand-alone special education classification, *Eligible for Speech-Language Services* (ESLS), or as a related service for children who are classified *Eligible for Special Education and Related Services* (ESERS) under any of the 14 primary disability categories listed in N.J.A.C. 6A:14-3.5 (c) (e.g., auditorily impaired, autism, learning disabled, preschool disabled, emotionally disturbed, intellectually disabled, etc.). It is estimated that less than half of the children who currently receive speech-language services are those who have speech-only disorders. *As SLSs have learned to comply with the regulation that requires a disability to adversely affect educational performance, fewer students with mild speech problems have been found to be eligible for special education services.* Rather, language impairments have become the focus of most school-based speech-language therapy.

SLSs work to improve their students' overall communication skills. Some of the severe cases are children who are nonverbal and require assistive technology for communication, while others are hard of hearing and may need specialized instruction. Some have feeding disabilities, which require swallowing in order to be able to attend school. SLSs also may work with children who have emotional disturbance or autism and need to develop better pragmatic language (i.e., social language skills we use in our daily interactions with others). *However, in addition to these severe cases, we now must consider the 35.43 percent of children classified as ESERS under Specific Learning Disability.¹ Because research over time has found that language impairments often co-exist or are the basis for learning disabilities, several children with learning disabilities now receive speech-language as a related service.* SLSs help children build the foundation skills needed for language literacy cited throughout the ***Common Core State Standards***. Children with language impairments can have difficulty with both receptive language when listening or reading and expressive language when speaking or writing. Conversely, while in school, they are expected to understand and use academic language (i.e., the language of the classroom), as well as social communication throughout the day. For example, understanding expository text (e.g., non-fiction textbooks) is very taxing for a child whose language abilities are compromised. Without intact expressive language, the ability to participate verbally in class and to write, especially about subject material, is very challenging. Such children also may have difficulty interacting with their peers during lunch and free time.

We now wish to reply to the committee's request for input regarding *NJSHA's concerns and recommendations to help ensure students with disabilities receive a thorough and efficient education through the delivery of programs and services.*

CONCERNS:

Inadequate Number of SLSs Employed by Some Districts:

NJSHA has seen positive changes in special education. New Jersey is becoming more inclusive with its special education population. When implemented appropriately, improved diagnoses and better early intervening services through the *New Jersey Tiered System of Supports* (NJTSS) will be invaluable not only to the students, but to the families and communities it serves. However, this only can happen for children with speech or language disabilities if adequate personnel are hired.

As school districts have learned to comply with federal law, especially the regulation that ensures children with special needs be educated in the Least Restrictive Environment (LRE), more students with disabilities are being educated in the classroom and many students with severe disabilities are returning to their home districts from approved private schools for students with disabilities. This shift has been occurring over 15 or more years and has necessitated employing increasing numbers of special education teachers. Despite these staff increases, NJSHA has received numerous emails from members, as well as reports from NJSHA board and committee members, that indicate that the number of SLSs employed by districts in New Jersey has not increased proportionally. This is not to imply that the number of SLSs should equal the number of teachers hired. Rather, we believe that to provide appropriate services, a proportional increase in the number of SLSs relative to the number of children receiving speech-language services is definitely needed.

By law, it is the obligation of each district and the NJDOE to ensure that each and every student with a disability receives a "free appropriate public education" (FAPE). NJSHA is concerned that not all students with speech-language disabilities are receiving FAPE. SLSs often are expected to provide services based on the number of children they must "fit into" their schedules, rather than the actual individual needs of their students. Consequently, in districts where the number of SLPs employed has not increased, students may receive less services in spite of the fact that such practice is against state and federal regulations. In fact, as stated in a December 10, 1996 response letter from Barbara Gantwerk, who, at the time, was the Director of the NJ Office of Special Education: "Districts stand in violation of the requirements of federal and state law and regulation when they provide speech-language services based on availability of staff and time rather than the individual needs of the students. They are also noncompliant when they have uniform group sizes and time allotments for all pupils receiving the services."

Medicaid Reimbursement: Time and Credentials:

New Jersey fiscal code for the public schools (proposed amendments are pending but are expected to be adopted in the near future) continues to mandate that Medicaid reimbursement for related services be maximized. This requires a great deal of extra time because SLSs must log sessions according to Medicaid regulations, which differ from educational regulations. Furthermore, SLSs who are considered to be "qualified providers" under Medicaid requirements, may be asked to supervise other SLSs who do not have the additional credentials needed to sign off on Medicaid documentation.

This is a complicated issue because, although all NJDOE certified SLSs are required to have a Master's degree to work in the schools, in order to bill for reimbursement, an SLS also must have additional

professional credentials to be considered a qualified Medicaid provider. To refer a child for evaluation in New Jersey, under Medicaid requirements the NJDOE certified SLS also must hold a valid speech-language pathologist license authorized by the State Audiology and Speech-Language Pathology Advisory Committee in the NJ Department of Consumer Affairs. To bill Medicaid for therapy services, an SLS must hold either an American Speech-Language-Hearing Association (ASHA) Certificate of Clinical Competence (CCC) or a valid license authorized by the State Audiology and Speech-Language Pathology Advisory Committee.³ The result is that the time needed to complete these tasks is taken away from that which is available for student services. Consequently, we have learned from our members that their students' FAPE may be in jeopardy. These demands are compounded by the general fiscal climate in the schools. Regardless of the fiscal climate, if SLSs do not comply with federal Medicaid regulations, they risk censorship or loss of CCC or their state license. Please see attachment regarding Medicaid fraud, which shows issues are occurring.

District Employees vs. Private Agency Contractors:

To address financial struggles, some districts have begun regularly outsourcing SLS positions to private companies instead of hiring in-district employees. This is happening despite the fact that New Jersey's Special Education Code requires that full-time SLSs be hired directly by the district except to supplement services or if a vacancy occurs because of absence for an identified period of time (N.J.A.C. 6A:14-5.1 (c) 1. v.).

NJSHA is concerned about the extensive use of private contractors, especially in full time positions. SLSs who are employees of the school districts have a vested interest in the community and its children. As mentioned before, district employed SLSs have become integral members of their school communities. They must act in their multifaceted roles proficiently and their performance is reviewed during periodic observations and in an annual evaluation. SLSs employed directly by the district frequently devote several hours beyond the contracted school day to fulfill their time-limited compliance responsibilities.

Though the contracted SLPs have the same qualifications, their time often is limited because they usually are not compensated for these indirect services or additional duties. Therefore, the contracted SLP probably will not be as involved in the culture and climate of the school. This may result in limited time for parental contact, embedded services in the classroom, and attendance at school events. It also is of paramount importance to recognize that loss of continuity of instruction is common when services are outsourced because of the transient nature of agency personnel. In addition, contracted employees are not always familiar with curricula, state guidelines, and the special education code. This knowledge helps to ensure educational relevance of the speech-language program.

Some school districts' policies of hiring only through private agencies may be giving the appearance of a shortage. These districts suggest that they are hiring SLSs through private agencies because they cannot find qualified candidates. Though we have no specific statistical information regarding a current shortage of SLSs throughout the state, NJSHA has information from at least one graduate program in New Jersey that in recent years, for the first time ever, all graduating students have not found jobs upon

graduation. In fact, a number of graduates have been told that a district will not hire them directly, but will hire them through a private agency. Though the NJDOE may not wish to interfere in a district's hiring policies, federal law (IDEA) mandates that, "the state must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined." [34CFR §300.103 FAPE-methods and payments. (c)] In fact, *New Jersey's Special Education Code requires that SLSs in full time positions be hired directly by the district unless a sufficient number cannot be found [N.J.A.C. 6A:14-5.1 (c) 1. v.]*

RECOMMENDATIONS:

Research is Needed to Help Guide Policy:

We would like to encourage the *Joint Committee on the Public Schools* to conduct research in several districts throughout various NJ counties regarding the increase of special education students and teachers over past 15 years compared to the increase of SLSs hired. NJSHA does not have this information, but we have anecdotal records by members who have indicated that SLSs are not being replaced when they retire, they are being directed to not find children eligible, and/or they are being asked to provide less to students whom they actually may feel need more services.

Though there most likely will not need to be as many SLSs as teachers, there should be an additional number of SLSs employed when the special education population noticeably increases. Consideration also must be given to the severity of disabilities among the children who have been brought back to or remain in district. Because districts now are saving significant amounts of money (i.e., up to \$60,000 or more per child) by keeping students in district, some of this money could be used to hire appropriate numbers of SLSs.

Dedicate a Portion of Medicaid Money Back to Speech-Language Services in the Schools:

Since SLSs bring in millions of dollars to the state through Medicaid reimbursement, a policy could be adopted by which some of this money be dedicated to hiring adequate numbers of SLSs and funding speech-language evaluation and treatment materials. It is important to recognize that the earlier that children get adequate services, the less services they will need in the future. This not only is beneficial to students served, but proves to be fiscally responsible over time. Those children who do not get adequate services will need more services in the future, which subsequently will increase the financial demands placed on a district.

Consider Universal Licensure in Speech-Language Pathology:

A growing number of states are moving toward a single license for SLPs, regardless of work setting. Universal licensure (also referred to as comprehensive licensure) ensures the protection of individuals of all ages who need the services of speech language pathologists by allowing one licensing body in each state to maintain jurisdiction over the practice of the profession. In New Jersey, this body would be the State Audiology and Speech-Language Pathology Advisory Committee in the NJ Department of Consumer Affairs. Currently, 18 states have adopted one license to practice speech-language pathology. The remaining states, like New Jersey, require a separate license or certification to work as a speech-language pathologist in the schools.

Legislation for universal licensure would ensure protection of the consumer, including individuals of all ages, who need the services of speech-language pathologists. This legislation could also include a grandfather clause for speech-language specialists certified by the NJDOE before the law is to go into effect to avoid a shortage of school-based SLPs.

With universal licensure, one of the major benefits to our state would be less confusion about who can sign off on Medicaid reimbursement documentation for speech-language services in the schools.

Universal licensure in New Jersey also would:

- ensure that only SLPs with the appropriate education, qualifications, and training can provide speech-language services;
- provide job portability, which would allow those who are qualified for full licensure to work in all settings;
- enhance recruitment of Clinical Fellows and other professionals; and
- provide the necessary authority to intervene in cases of provider misconduct.

Once again, NJSHA would like to express our appreciation for this invitation to share our ideas with you. Please do not hesitate to call upon us if we can assist you in any way to help ensure that *students with disabilities receive a thorough and efficient education through the delivery of programs and services, especially for those who have speech or language impairments.*

¹“Children Receiving Free and Appropriate Education (Ages 6-21) ** As of October 15, 2015.” New Jersey Department of Education, Office of Special Education Programs. http://www.nj.gov/education/specialed/data/2015/6_21FAPE.pdf

²“Children and Youth With Disabilities.” *The Condition of Education 2016* : National Center for Education Statistics, May 2016. https://nces.ed.gov/programs/coe/indicator_cgg.asp

³“Speech Therapy.” *State of New Jersey: School Based Medicaid Reimbursement Programs Provider Handbook*, pp. 16-18. <http://www.state.nj.us/treasury/administration/pdf/semi-handbook.pdf>

The following excellent publication is available online for additional, detailed information about the roles and responsibilities of school-based speech-language pathologists:

Roles And Responsibilities of Speech-Language Pathologists in Schools [Professional Issues Statement]. American Speech-Language-Hearing Association (ASHA), 2010. <http://www.asha.org/content.aspx?id=10737450124>

New Jersey Department of Education
Office of Special Education Programs
Children Receiving Free and Appropriate Education (Ages 6-21) **
As of October 15, 2015

RACE/ETHNICITY	STUDENT COUNT (AGES 6-21)	IN PERCENTS
White	110795	51.84
Hispanic/Latino	52607	24.61
Black or African American	38436	17.98
Asian	8486	3.97
Two or more races	2825	1.32
Native Hawaiian or Other Pacific Islander	292	0.14
American Indian or Alaska Native	286	0.13
Total	213727	100.00

GENDER	STUDENT COUNT (AGES 6-21)	IN PERCENTS
Female	71713	33.55
Male	142014	66.45
Total	213727	100.00

DISABILITY CATEGORY	STUDENT COUNT (AGES 6-21)	IN PERCENTS
Autism	17431	8.16
Deaf-blindness	24	0.01
Emotional disturbance	7955	3.72
Hearing impairment	1477	0.69
Multiple disabilities	15834	7.41
Intellectual disability	5049	2.36
Other health impairment	43771	20.48
Orthopedic impairment	378	0.18
Specific learning disability	75723	35.43
Speech or language impairment	45095	21.10
Traumatic brain injury	606	0.28
Visual impairment	384	0.18
Total	213727	100.00

LEP STATUS	STUDENT COUNT (AGES 6-21)	IN PERCENTS
Limited English proficient (LEP) Student	4660	2.18
Non-limited English proficient (Non-LEP)	209067	97.82
Total	213727	100.00

** Includes Public and Non-Public Students

Children and Youth with Disabilities

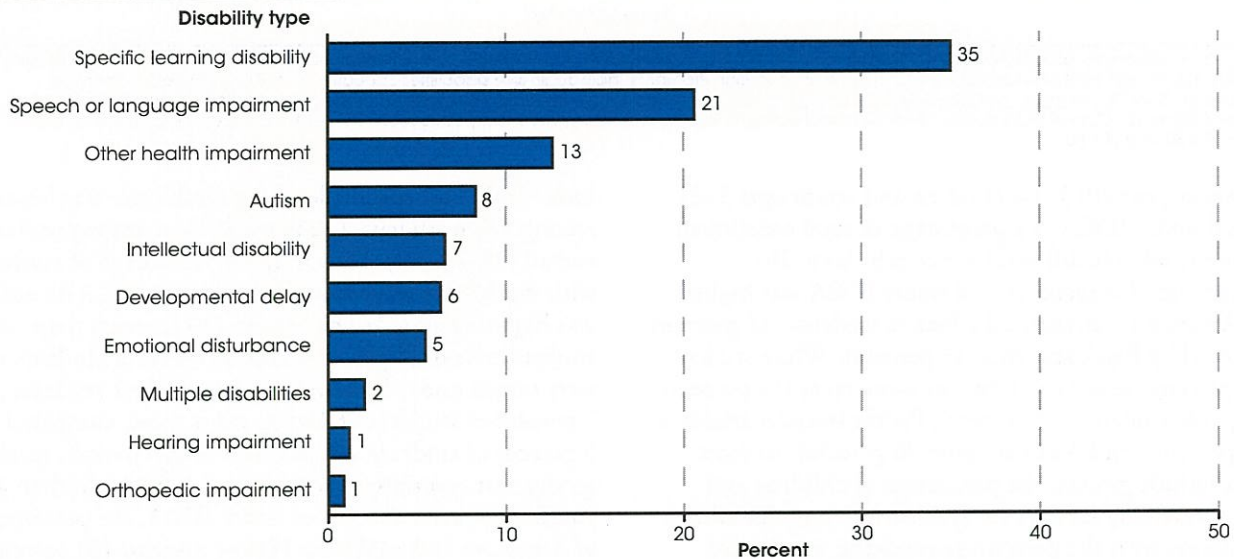
In 2013–14, the number of children and youth ages 3–21 receiving special education services was 6.5 million, or about 13 percent of all public school students. Among students receiving special education services, 35 percent had specific learning disabilities.

Enacted in 1975, the Individuals with Disabilities Education Act (IDEA), formerly known as the Education for All Handicapped Children Act (EAHCA), mandates the provision of a free and appropriate public school education for eligible students ages 3–21. Eligible students are those identified by a team of professionals as having a disability that adversely affects academic performance and as being in need of special education and related services. Data collection activities to monitor compliance with IDEA began in 1976.

special education services increased from 4.7 million, or 11 percent of total public school enrollment, to 6.7 million, or 14 percent of total public school enrollment. Both the number and percentage of students served under IDEA declined from 2004–05 through 2011–12. There was evidence that the number and percentage of students served leveled off in 2012–13 and 2013–14. By 2013–14, the number of students served under IDEA was 6.5 million, or 13 percent of total public school enrollment.

From school years 1990–91 through 2004–05, the number of children and youth ages 3–21 who received

Figure 1. Percentage distribution of children ages 3–21 served under the Individuals with Disabilities Education Act (IDEA), Part B, by disability type: School year 2013–14



NOTE: Deaf-blindness, traumatic brain injury, and visual impairment are not shown because they each account for less than 0.5 percent of children served under IDEA. Due to categories not shown, detail does not sum to total. Although rounded numbers are displayed, the figures are based on unrounded estimates.

SOURCE: U.S. Department of Education, Office of Special Education Programs, Individuals with Disabilities Education Act (IDEA) database, retrieved September 25, 2015, from <http://www2.ed.gov/programs/osepidea/618-data/state-level-data-files/index.html#bcc>. See *Digest of Education Statistics 2015*, table 204.30.

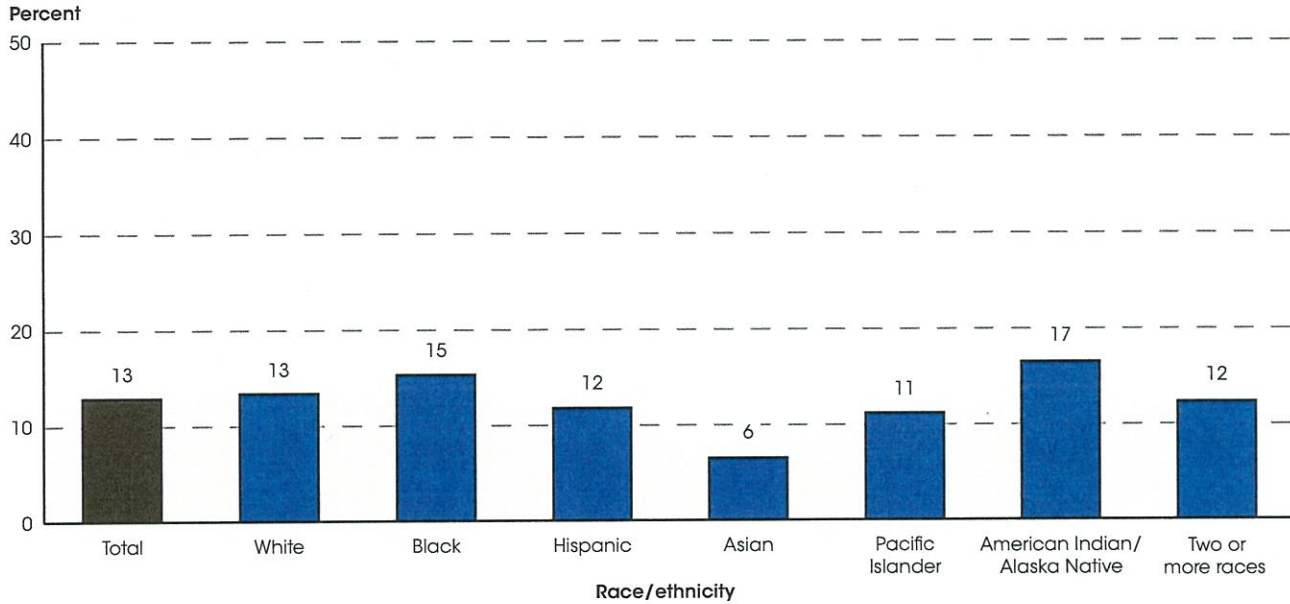
In school year 2013–14, a higher percentage of children and youth ages 3–21 received special education services under IDEA for specific learning disabilities than for any other type of disability. A specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect

ability to listen, think, speak, read, write, spell, or do mathematical calculations. In 2013–14, some 35 percent of all students receiving special education services had specific learning disabilities, 21 percent had speech or language impairments, and 13 percent had other health impairments (including having limited strength, vitality, or alertness due to chronic or acute health problems

such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes). Students with autism, intellectual disabilities, developmental delays, or emotional disturbances each accounted for between 5 and

8 percent of students served under IDEA. Students with multiple disabilities, hearing impairments, orthopedic impairments, visual impairments, traumatic brain injuries, or deaf-blindness each accounted for 2 percent or less of those served under IDEA.

Figure 2. Percentage, of total enrollment, of children ages 3–21 served under the Individuals with Disabilities Education Act (IDEA), Part B, by race/ethnicity: School year 2013–14



NOTE: Race categories exclude persons of Hispanic ethnicity. Although rounded numbers are displayed, the figures are based on unrounded estimates. SOURCE: U.S. Department of Education, Office of Special Education Programs, Individuals with Disabilities Education Act (IDEA) database, retrieved September 25, 2015, from <http://www2.ed.gov/programs/osepidea/618-data/state-level-data-files/index.html#bcc>; and National Center for Education Statistics, Common Core of Data (CCD), "State Nonfiscal Survey of Public Elementary/Secondary Education," 2013–14. See *Digest of Education Statistics 2015*, tables 204.30 and 204.50.

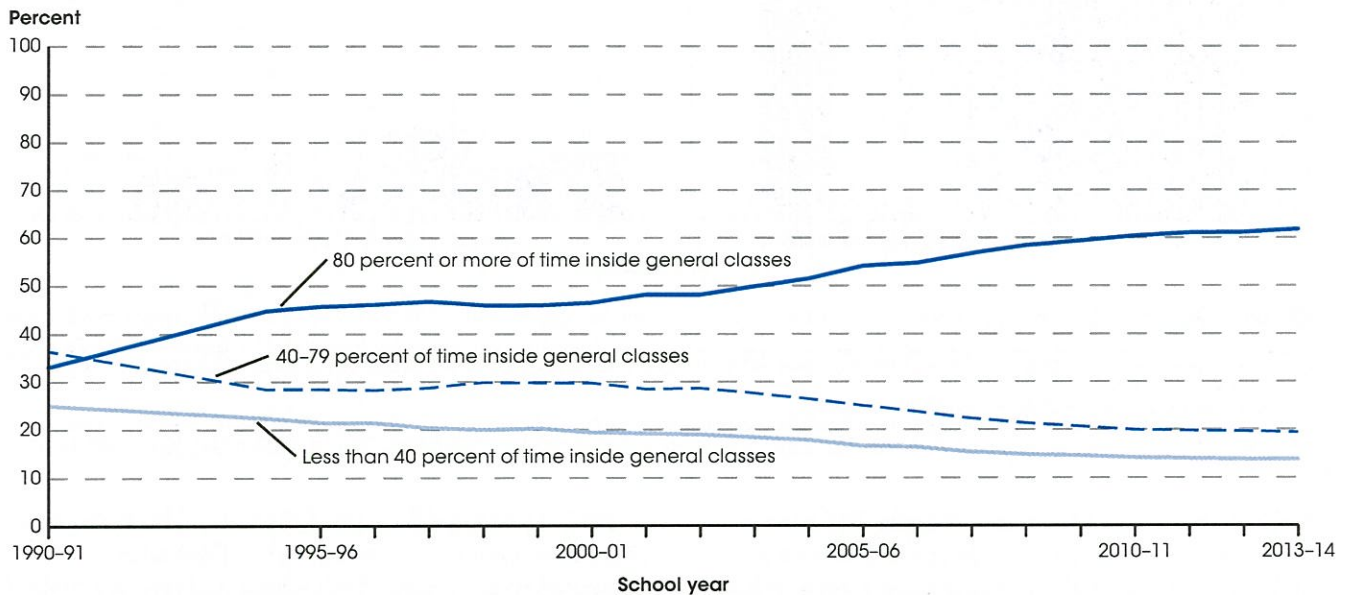
In school year 2013–14, children and youth ages 3–21 served under IDEA as a percentage of total enrollment in public schools differed by race/ethnicity. The percentage of students served under IDEA was highest for American Indian/Alaska Native students (17 percent), followed by Black students (15 percent), White students (13 percent), students of Two or more races (12 percent), Hispanic students (12 percent), Pacific Islander students (11 percent), and Asian students (6 percent). In most racial/ethnic groups, the percentage of children and youth receiving services for specific learning disabilities combined with the percentage receiving services for speech or language impairments accounted for over 50 percent of children and youth served under IDEA. The percentage distribution of various types of special education services received by students ages 3–21 in 2013–14 differed by race/ethnicity. For example, the percentage of students with disabilities receiving services

under IDEA for specific learning disabilities was lower among Asian students (22 percent) than among students overall (35 percent). However, the percentage of students with disabilities receiving services under IDEA for autism was higher among Asian students (19 percent) than among students overall (8 percent). Additionally, of students who were served under IDEA, 8 percent of Black students and 7 percent of students of Two or more races, compared to 5 percent of students served under IDEA overall, received services for emotional disturbances. Among children and youth who received services under IDEA, the percentages of American Indian/Alaska Native students (10 percent), Pacific Islander students (8 percent), and students of Two or more races (8 percent) who received services for developmental delays were higher than the percentage of students overall receiving services for developmental delays (6 percent).

Separate data on special education services for males and females are available only for students ages 6–21. Among those 6- to 21-year-olds enrolled in public schools in 2013–14, a higher percentage of males (16 percent) than females (9 percent) received special education services under IDEA. The percentage distribution of students ages 6–21 who received various types of special education services in 2013–14 differed by sex. For example, the

percentage of students served under IDEA who received services for specific learning disabilities was higher among female students (44 percent) than among male students (37 percent), while the percentage served under IDEA who received services for autism was higher among male students (11 percent) than among female students (4 percent).

Figure 3. Percentage of students ages 6–21 served under the Individuals with Disabilities Education Act (IDEA), Part B, placed in a regular public school environment, by amount of time spent inside general classes: Selected school years, 1990–91 through 2013–14



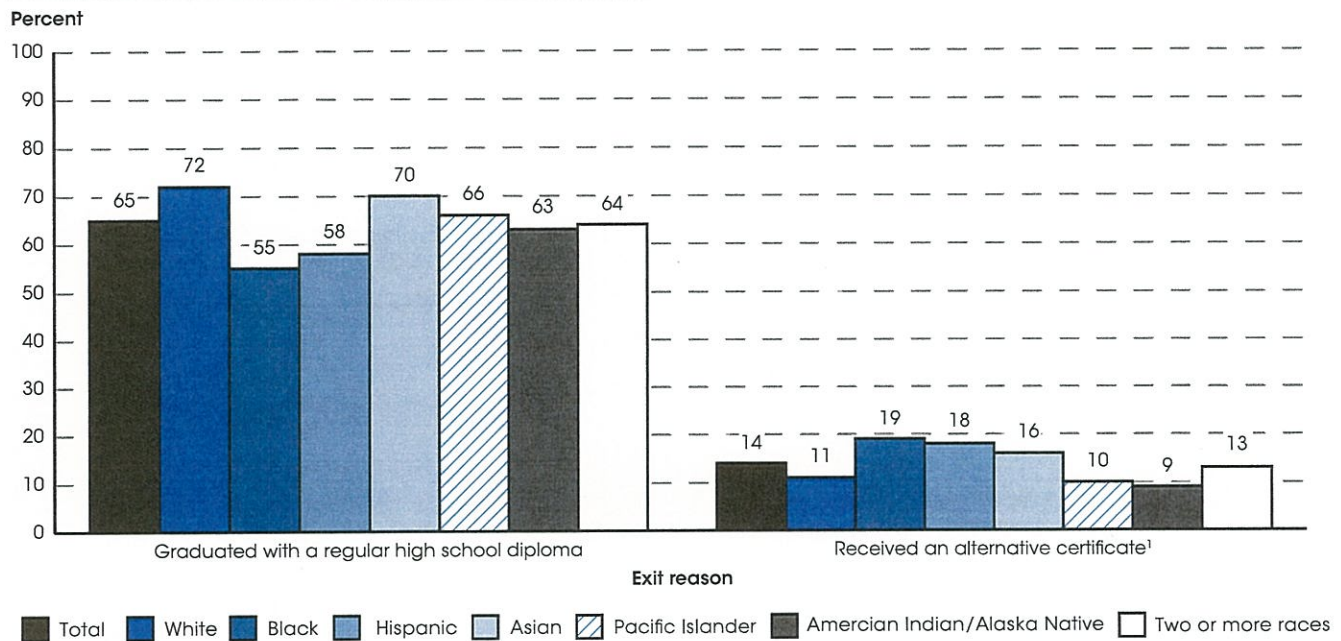
SOURCE: U.S. Department of Education, Office of Special Education Programs, Individuals with Disabilities Education Act (IDEA) database, retrieved October 29, 2015, from <http://www2.ed.gov/programs/osepidea/618-data/state-level-data-files/index.html#bcc>. See *Digest of Education Statistics 2015*, table 204.60.

Educational environment data are available for students ages 6–21 served under IDEA. About 95 percent of children and youth ages 6–21 who were served under IDEA in 2013–14 were enrolled in regular schools. Some 3 percent of students ages 6–21 who were served under IDEA were enrolled in separate schools (public or private) for students with disabilities; 1 percent were placed by their parents in regular private schools; and less than 1 percent each were in separate residential facilities (public or private), homebound or in hospitals, or in correctional facilities. Among all students ages 6–21 who were served under IDEA, the percentage who spent most of the school day (i.e., 80 percent or more of time) in general classes in regular schools increased from 33 percent in 1990–91 to 62 percent in 2013–14. In contrast, during the same period, the percentage of those who spent 40 to 79 percent of the school day in general classes declined from 36 to 19 percent, and the percentage of those who spent less than 40 percent of time inside general classes also declined, from 25 to 14 percent. In 2013–14, the percentage of students served

under IDEA who spent most of the school day in general classes was highest for students with speech or language impairments (87 percent). Approximately two-thirds of students with specific learning disabilities (68 percent), visual impairments (65 percent), other health impairments (64 percent), and developmental delays (63 percent) spent most of the school day in general classes. In contrast, 16 percent of students with intellectual disabilities and 13 percent of students with multiple disabilities spent most of the school day in general classes.

Data are also available for students ages 14–21 served under IDEA who exited school during school year 2012–13, including exit reason. In 2012–13, approximately 396,000 students ages 14–21 who received special education services under IDEA exited school: almost two-thirds (65 percent) graduated with a regular high school diploma, 14 percent received an alternative certificate,¹ 19 percent dropped out, 1 percent reached maximum age, and less than one-half of 1 percent died.

Figure 4. Percentage of students ages 14–21 served under the Individuals with Disabilities Education Act (IDEA), Part B, who exited school, by exit reason and race/ethnicity: School year 2012–13



¹ Received a certificate of completion, modified diploma, or some similar document, but did not meet the same standards for graduation as those for students without disabilities.
NOTE: Race categories exclude persons of Hispanic ethnicity.
SOURCE: U.S. Department of Education, Office of Special Education Programs, Individuals with Disabilities Education Act (IDEA) Section 618 Data Products: State Level Data Files, retrieved November 30, 2015, from <http://www2.ed.gov/programs/osepidea/618-data/state-level-data-files/index.html>. See *Digest of Education Statistics 2015*, table 219.90.

Of the students ages 14–21 served under IDEA who exited school, the percentage who graduated with a regular high school diploma was highest among White students (72 percent) and lowest among Black students (55 percent). The percentage of students served under IDEA who received an alternative certificate was highest among Black students (19 percent) and lowest among American Indian/Alaska Native students (9 percent). The percentage of students served under IDEA who exited special education due to dropping out in 2012–13 was highest among American Indian/Alaska Native students (27 percent) and lowest among Asian students (9 percent).

The percentage of students ages 14–21 served under IDEA who graduated with a regular high school diploma

in 2012–13 differed by type of disability. The percentage of students ages 14–21 served under IDEA who graduated with a regular high school diploma was highest among students with visual impairments (77 percent) and lowest among those with intellectual disabilities (43 percent). The percentage of students served under IDEA who received an alternative certificate was highest among students with intellectual disabilities (33 percent) and lowest among students with speech or language impairments (9 percent). The percentage of students served under IDEA who dropped out in 2012–13 was highest among students with emotional disturbance (35 percent) and lowest among students with autism (7 percent).

Endnotes:

¹ Received a certificate of completion, modified diploma, or some similar document, but did not meet the same standards for graduation as those for students without disabilities.

Reference tables: *Digest of Education Statistics 2015*, tables 204.30, 204.50, 204.60, and 219.90

Related indicators: N/A

Glossary: Disabilities, children with; Enrollment; High school completer; High school diploma; Individuals with Disabilities Education Act (IDEA); Private school; Public school or institution; Racial/ethnic group; Regular school



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

September 14, 2010

TO: Donald M. Berwick, M.D.
Administrator
Centers for Medicare & Medicaid Services

FROM: /Joe J. Green/ for
George M. Reeb
Acting Deputy Inspector General for Audit Services

SUBJECT: Review of New Jersey's Medicaid School-Based Health Claims Submitted by
Public Consulting Group, Inc. (A-02-07-01052)

Attached, for your information, is an advance copy of our final report on New Jersey's Medicaid school-based health claims submitted by Public Consulting Group, Inc. We will issue this report to the New Jersey Department of Human Services within 5 business days.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may contact Robert A. Vito, Acting Assistant Inspector General for the Centers for Medicare & Medicaid Audits, at (410) 786-7104 or through email at Robert.Vito@oig.hhs.gov or James P. Edert, Regional Inspector General for Audit Services, Region II, at (212) 264-4620 or through email at James.Edert@oig.hhs.gov. Please refer to report number A-02-07-01052.

Attachment

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Office of Audit Services
Jacob Javits Federal Building
26 Federal Plaza, Room 3900
New York, NY 10278

September 15, 2010

Report Number: A-02-07-01052

Ms. Jennifer Velez, Esq.
Commissioner
New Jersey Department of Human Services
222 South Warren Street
P.O. Box 700
Trenton, NJ 08625-0700

Dear Ms. Velez:

Enclosed is the U.S. Department of Health & Human Services (HHS), Office of Inspector General (OIG), final report entitled *Review of New Jersey's Medicaid School-Based Health Claims Submitted by Public Consulting Group, Inc.* We will forward a copy of this report to the HHS action official noted on the following page for review and any action deemed necessary.

The HHS action official will make final determination as to actions taken on all matters reported. We request that you respond to this official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

Section 8L of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://oig.hhs.gov>.

If you have any questions or comments about this report, please do not hesitate to call me, or contact Richard Schlitt, Audit Manager, at (212) 264-4817 or through email at Richard.Schlitt@oig.hhs.gov. Please refer to report number A-02-07-01052 in all correspondence.

Sincerely,

/James P. Edert/
Regional Inspector General
for Audit Services

Enclosure

Page 2 – Ms. Jennifer Velez, Esq.

Direct Reply to HHS Action Official:

Ms. Jackie Garner
Consortium Administrator
Consortium for Medicaid and Children's Health Operations
Centers for Medicare & Medicaid Services
233 North Michigan Avenue, Suite 600
Chicago, IL 60601

Department of Health & Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF NEW JERSEY'S MEDICAID
SCHOOL-BASED HEALTH CLAIMS
SUBMITTED BY
PUBLIC CONSULTING GROUP, INC.**



Daniel R. Levinson
Inspector General

September 2010
A-02-07-01052

Office of Inspector General

<http://oig.hhs.gov>

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health & Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

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The Office of Audit Services (OAS) provides auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations. These assessments help reduce waste, abuse, and mismanagement and promote economy and efficiency throughout HHS.

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Section 8L of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site.

OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

EXECUTIVE SUMMARY

BACKGROUND

Pursuant to Title XIX of the Social Security Act (the Act), the Medicaid program provides medical assistance to certain low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. Although the State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements. In New Jersey, the Department of Human Services is responsible for operating the Medicaid program.

Section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (P. L. No. 100-360) amended section 1903(c) of the Act to permit Medicaid payment for medical services provided to children under the Individuals with Disabilities Education Act through a child's individualized education plan. Pursuant to Federal and State requirements, such services require a referral or prescription from a properly credentialed physician or licensed practitioner. These services must be provided by an individual who meets Federal qualification requirements and be fully documented. In addition, pursuant to New Jersey's State Medicaid plan requirements, these services must be documented in a treatment plan.

For the period April 6, 2005, through June 27, 2007, New Jersey received more than \$45.3 million in Federal Medicaid reimbursement for school-based health claims submitted by its billing agent, Public Consulting Group, Inc. (PCG).

OBJECTIVE

Our objective was to determine whether New Jersey's Medicaid school-based health claims submitted by its billing agent, PCG, complied with Federal and State requirements.

SUMMARY OF FINDINGS

New Jersey's claims for reimbursement of Medicaid school-based health services submitted by PCG did not fully comply with Federal and State requirements. Of the 100 school-based health claims in our sample, 64 claims complied with Federal and State requirements. However, the remaining 36 did not.

Of the 36 noncompliant claims, 11 claims contained more than 1 deficiency:

- Sixteen claims lacked a referral or prescription.
- Sixteen claims did not meet Federal provider qualification requirements.
- Fourteen claims contained services that were not provided or supported.
- One claim contained services not documented in the child's plan.

These deficiencies occurred because: (1) school-based health providers did not comply with guidance related to Federal requirements and (2) New Jersey did not adequately monitor school-based health claims for compliance with Federal and State requirements.

Based on our sample results, we estimate that New Jersey was improperly reimbursed \$5,613,885 in Federal Medicaid funds during our April 6, 2005, through June 27, 2007, audit period.

RECOMMENDATIONS

We recommend that New Jersey:

- refund \$5,613,885 to the Federal Government and
- consider the results of this review in its evaluation of our prior recommendations to ensure that its school-based health providers comply with Federal and State requirements.

NEW JERSEY COMMENTS

In its comments on our draft report, New Jersey disagreed with our recommended refund. In addition, New Jersey questioned our sampling methodology and disagreed with what we accepted as valid referrals. However, New Jersey described corrective actions that it has taken in response to our second recommendation. New Jersey also provided additional documentation for six claims we questioned in our draft report.

OFFICE OF INSPECTOR GENERAL RESPONSE

Our statistical sampling methodology used to determine the estimated overpayment was valid. After reviewing the additional documentation provided by New Jersey, we determined that some services for five claims complied with Federal and State requirements and revised our findings and recommended refund accordingly.

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INTRODUCTION

BACKGROUND

Medicaid Program

Pursuant to Title XIX of the Social Security Act (the Act), the Medicaid program provides medical assistance to certain low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. Although the State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements.

Medicaid Coverage of School-Based Health Services

Section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (P.L. No. 100-360) amended section 1903(c) of the Act to permit Medicaid payment for medical services provided to children under the Individuals with Disabilities Education Act (IDEA) (originally enacted as P.L. No. 91-230 in 1970) through a child's individualized education plan.

Federal and State rules require that school-based health services be (1) referred or prescribed by a physician or another appropriate professional, (2) provided by an individual who meets Federal qualification requirements, (3) fully documented, (4) actually furnished in order to be billed, and (5) documented in the child's plan.

In August 1997, CMS issued a guide entitled *Medicaid and School Health: A Technical Assistance Guide* (technical guide). According to the technical guide, school-based health services included in a child's plan may be covered if all relevant statutory and regulatory requirements are met. In addition, the technical guide provides that a State may cover services included in a child's plan as long as: (1) the services are listed in section 1905(a) of the Act and are medically necessary; (2) all Federal and State regulations are followed, including those specifying provider qualifications; and (3) the services are included in the State plan or available under the Early and Periodic Screening, Diagnostic and Treatment Medicaid benefit. Covered services may include, but are not limited to, physical therapy, occupational therapy, speech pathology/therapy services, psychological counseling, nursing, and transportation services.

New Jersey's Medicaid Program

In New Jersey, the Department of Human Services is responsible for operating the Medicaid program. Within the New Jersey Department of Human Services, the Division of Medical Assistance and Health Services administers the Medicaid program. The administrative responsibility for operating New Jersey's school-based health services program, known as the Special Education Medicaid Initiative (SEMI), is shared among three State departments: Human Services, Education, and Treasury. The State also contracted with a billing agent, Public

Consulting Group, Inc. (PCG), to help administer its Medicaid school-based health services program. The responsibilities of each are as follows:

1. The Department of Human Services oversees school-based health provider enrollment, provides technical assistance to school-based health providers, and processes providers' claims through New Jersey's Medicaid Management Information System fiscal intermediary.
2. The Department of Education certifies school-based health providers and provides policy guidance.
3. The Department of Treasury serves as the contract manager for the SEMI billing agent.
4. The billing agent is responsible for processing billing agreements and pupil registration information from school-based health providers providing technical assistance (including monitoring) on school-based health program issues, and conducting Medicaid eligibility verification for registered pupils. PCG was the contracted billing agent for New Jersey during our audit period.¹

The primary State guidance for administering and operating the school-based health program is the *SEMI Provider Handbook* (State handbook). New Jersey and the billing agent developed the handbook using both education and Medicaid requirements. The State handbook is issued to all school-based health providers and contains detailed instructions on their responsibilities under the school-based health program. The State handbook developed with PCG incorporated recommendations and criteria from a prior Office of Inspector General audit report (A-02-03-01003) that were not included in the State handbook developed with the previous billing agent.

Pursuant to New Jersey's Medicaid State plan, the school-based health program comprises rehabilitative services,² evaluation services,³ and transportation services.⁴ School-based health

¹ PCG has overseen the SEMI program since January 2005 under a contingency-fee based arrangement. Although PCG is not paid directly with Federal Medicaid funds, it is paid a percentage of the Federal Medicaid reimbursements made for New Jersey's SEMI program. We selected this program for review as part of a nationwide contingency fee review.

² Often referred to as related school health services, rehabilitative services include occupational, physical, and speech-language therapies; audiology services; psychological counseling and psychotherapy; and nursing.

³ Evaluation services identify the need for school-based health services and prescribe the range and frequency of services that the student requires. Evaluation services may include reevaluation or review of the current school-based health services specified in the child's plan.

⁴ Transportation services are allowable when provided on the same day as a related service and when transportation is included in the child's plan. Pursuant to a May 21, 1999, letter from the Director of CMS's Center for Medicaid and State Operations to all State Medicaid directors, only specialized transportation can be billed to Medicaid. According to CMS, "specialized transportation" means that a child requires transportation in a vehicle adapted to serve the needs of the disabled, including a specially adapted school bus.

providers submit claims information to PCG through EasyTRAC, an online documentation system that provides access to student information. (EasyTRAC can store information, such as provider qualifications, child's plan dates, and parental consent dates, to support school-based health claims.) PCG then prepares claims based on the information received through EasyTRAC. A school-based claim consists of a bill for related school-based health services, evaluation services, or transportation services.

The Federal Government's share of costs for school-based health claims is known as the Federal medical assistance percentage (FMAP). From April 6, 2005, through June 27, 2007, the FMAP was 50 percent in New Jersey. For this period, New Jersey received more than \$45.3 million of Federal Medicaid reimbursement for 157,114 claims.

Prior Office of Inspector General Audit Reports

On May 19, 2006, the Office of Inspector General issued a report (A-02-03-01003) on New Jersey's SEMI program for the period July 1, 1998, through June 30, 2001. The objective of the audit was to determine whether Federal Medicaid payments for school-based health services claimed by school-based health providers in New Jersey were in compliance with Federal and State requirements. Among other recommendations, the report recommended that New Jersey refund \$51,262,909 to the Federal Government and work with CMS to resolve \$1,046,786 in set aside claims.⁵

On February 8, 2008, the Office of Inspector General issued a report (A-02-04-01017) on the rates used by New Jersey for claiming Federal Medicaid reimbursement for the SEMI and Medicaid Administrative Claiming programs. The objective of the audit was to determine whether the rates used by New Jersey were reasonable and complied with Federal requirements and the Medicaid State plan. The report recommended that New Jersey work with CMS to determine overpayment amounts for the period July 1, 1998, through June 30, 2001, and ensure that rates used to claim Federal Medicaid reimbursement for school-based health services are properly developed and documented.

On April, 23, 2010, the Office of Inspector General issued a report (A-02-07-01051) to New Jersey regarding Medicaid school-based health claims submitted by its previous billing agent, Maximus, Inc., for the period July 27, 2003, through October 4, 2006. The report recommended that New Jersey provide proper and timely guidance on Federal Medicaid criteria to its school-based health providers and to improve its monitoring of school-based health providers' claims to ensure compliance with Federal and State requirements.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether New Jersey's Medicaid school-based health claims submitted by its billing agent, PCG, complied with Federal and State requirements.

⁵ CMS sustained the recommendations with minor adjustments.

Scope

Our review covered 157,114 claims paid totaling \$90,731,406 (\$45,365,703 Federal share) for the period April 6, 2005, through June 27, 2007. During our audit, we did not review the overall internal control structure of PCG, New Jersey, or the Medicaid program. Rather, we limited our internal control review to those controls that were significant to the objective of our audit.

We conducted fieldwork at the Department of Human Service's offices in Mercerville and Trenton, New Jersey, as well as at 45 selected schools throughout the State.

Methodology

To accomplish our objective, we:

- reviewed applicable Federal and State laws, regulations, and guidelines;
- held discussions with New Jersey and billing agent officials to gain an understanding of New Jersey's school-based health services program;
- obtained an understanding of computer edits and administrative controls regarding claiming Medicaid reimbursement for school-based health services;
- obtained a computer-generated file identifying all Medicaid school-based health claims submitted by New Jersey for the period July 27, 2003, through June 27, 2007;
- separated the file into two segments based on billing agent: claims submitted by Maximus Inc.,⁶ and claims submitted by PCG, and the PCG sampling frame consisted of 157,114 student-months (all services provided to an individual student for a month during our audit period) with a total Medicaid paid amount of \$90,731,406 (\$45,365,703 Federal share);
- used stratified random sampling techniques to select a sample of 100 claims from the sampling frame of 157,114 claims;⁷
- visited the school associated with each sample claim to review documentation supporting the claim;⁸

⁶ We are conducting a separate review (A-02-07-01051) of claims submitted by New Jersey for the period July 27, 2003, through October 4, 2006, when Maximus, Inc., was the State's school-based health services billing agent.

⁷ The 100 sample claims included 149 services: 47 for evaluation services, 43 for speech services, 19 for occupational therapy services, 14 for psychological counseling services, 12 for physical therapy services, 9 for nursing services, and 5 for transportation services.

⁸ If documentation was not readily available, we accepted faxed copies at later dates.

- determined if the service provider or speech pathologist associated with the sample claim was certified by the American Speech-Language-Hearing Association (ASHA) and/or licensed by the New Jersey Division of Consumer Affairs, the State licensing agency; and
- estimated the dollar impact of the improper Federal reimbursement claimed in the total population of 157,114 school-based claims.

Appendix A contains the details of our sample design and methodology. Appendix B contains our sample results and estimates.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

FINDINGS AND RECOMMENDATIONS

New Jersey's claims for reimbursement of Medicaid school-based health services submitted by PCG did not fully comply with Federal and State requirements. Of the 100 school-based health claims in our sample, 64 claims complied with Federal and State requirements. However, the remaining 36 did not. The table summarizes the deficiencies noted and the number of claims that contained each type of deficiency. Appendix C contains a summary of deficiencies, if any, identified for each sampled claim.

Summary of Deficiencies in Sampled Claims

Type of Deficiency	Number of Deficient Claims ⁹
Referral or prescription requirements not met	16
Federal provider requirements not met	16
Services not provided or not supported	14
Services not documented in child's plan	1

These deficiencies occurred because: (1) school-based health providers did not comply with guidance related to Federal requirements and (2) New Jersey did not adequately monitor school-based health claims for compliance with Federal and State requirements.

Based on our sample results, we estimate that New Jersey was improperly reimbursed \$5,613,885 in Federal Medicaid funds during our April 6, 2005, through June 27, 2007, audit period.

⁹ The total exceeds 36 because 11 claims contained more than 1 deficiency.

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REFERRAL OR PRESCRIPTION REQUIREMENTS NOT MET

Pursuant to 42 CFR § 440.110 (a)(b)(c), a referral or prescription from a physician or another licensed practitioner of the healing arts is required for physical therapy; occupational therapy; and services for individuals with speech, hearing, and language disorders provided by or under the direction of a qualified practitioner to be eligible for Medicaid reimbursement. For nursing services, the New Jersey Board of Nursing Statute 45:11-23 allows nurses to execute medical regimens as prescribed by a licensed (or otherwise legally authorized) physician or dentist.

For 16 of the 100 claims in our sample, the school-based health provider could not provide referrals or prescriptions to support the related service. Specifically, 15 speech therapy services did not meet Federal referral and prescription requirements, and 1 nursing service did not meet State prescription requirements.

FEDERAL PROVIDER REQUIREMENTS NOT MET

Federal regulations (42 CFR § 440.110) set forth provider credential requirements for physical, occupational, and speech therapy services. For 16 of the 100 claims in our sample, the speech therapy practitioner associated with the claim did not meet these regulations.

Speech Therapy Provider Requirements Not Met

Pursuant to 42 CFR § 440.110(c)(2), for a speech therapy claim to be eligible for Medicaid reimbursement, it must be provided by or under the direction of a speech pathologist who: (1) is certified by ASHA or (2) has completed the equivalent education requirements and work experience necessary to be eligible for ASHA's certificate of clinical competence or (3) has completed the academic program and is in the process of acquiring the necessary supervised work experience to qualify for the certificate.

In a December 28, 1993, letter, CMS asked New Jersey officials to provide assurance that speech therapy providers would meet the qualifications detailed in 42 CFR § 440.110(c)(2). In an August 1, 1995, letter, New Jersey assured CMS that it would bill Medicaid for only those services provided by or under the direction of qualified speech-language practitioners.

However, for 16 of the 100 claims in our sample, the practitioner who provided the speech therapy service was not ASHA-certified or did not have the equivalent educational requirements and work experience necessary to be eligible for ASHA certification.

ASHA requires all applicants for certification of clinical compliance to possess a master's or doctoral degree granted by a regionally accredited institution of higher education and have completed a minimum of 75 semester credit hours in a course of study addressing the knowledge and skills pertinent to the field of speech-language pathology. Additionally, applicants must complete a 350-hour minimum clinical practicum under the supervision of an individual who holds a certificate of clinical competence and a 36-week, full-time fellowship.

None of the practitioners associated with the 16 claims in our sample met these requirements. The practitioners who provided the services were authorized by the New Jersey Department of Education (DOE) to serve in public schools as either a speech correctionist or a speech language specialist. The DOE does not require specific coursework towards a master's degree, a 350-hour clinical practicum, or a clinical fellowship.

Finally, for the 16 sample claims in question, the school-based providers did not furnish any documentation showing that the services provided met the "under the direction of" requirements. Pursuant to 42 CFR § 440.110(c) and Medicaid State Operations Letter 95-12, issued on February 9, 1995, "under the direction of a speech pathologist" means that the speech pathologist is individually involved with the patient under his or her direction and accepts ultimate responsibility for the actions of the personnel that he or she agrees to direct.

SERVICES NOT PROVIDED OR NOT SUPPORTED

Pursuant to section 1902(a)(27) of the Act, States claiming Federal Medicaid funding must document services provided. This requirement is reiterated in CMS's technical guide and the State handbook, which both state that school-based health providers must maintain records documenting that a related service or evaluation service was provided. The technical guide states that relevant documentation includes the date and location of the service, the identity of the provider, and the length of time required for the service.

In addition, pursuant to 42 CFR § 455.1(a)(2), States are required to have a method for verifying whether services reimbursed by Medicaid were actually furnished. Further, pursuant to 42 CFR § 455.18, New Jersey's Medicaid provider agreements require providers to certify that the information on their Medicaid claims is true, accurate, and complete.¹⁰ Providers and billing agents also certify that they agree to keep records necessary to fully disclose the extent of services provided, as required by section 1902(a)(27) of the Act.

For 14 of the 100 claims in our sample, school-based health providers received Medicaid payments for services that were not provided or not supported. Specifically:

- For 10 claims, documentation indicated that the related service(s) billed were not provided.¹¹ Specifically:
 - For six claims, the school register indicated that the student was absent from school or school was not in session on at least 1 day that the school-based health provider claimed services.

¹⁰ The regulation requires State Medicaid claim forms to include a certification by providers that the information on the claims is true, accurate, and complete or States may print similar wording above the claimant's endorsement on checks payable to providers. In New Jersey, both the *Provider Electronic Billing Agreement for Providers With Billing Agents* and the *Medicaid Health Insurance Portability and Accountability Act Electronic Data Interchange Agreement* include such certifications.

¹¹ The total exceeds 10 because 1 claim had multiple deficiencies.

- For four claims, documentation for the associated student did not support the number of services billed.
- For one claim, two separate school-based health providers submitted claims for the same evaluation service.
- For two claims containing specialized transportation services, school-based health providers did not have documentation to support the number of transportation services billed.
- For two claims, school-based health providers could not provide any documentation to support the related service.

CHILD'S PLAN NOT PROVIDED

Section 1903(c) of the Act permits Medicaid payment for medical services provided to children under IDEA if the services are included in a child's plan. Pursuant to Part B of IDEA, school districts must prepare a child's plan for each child that specifies all special education and related services that the child needs. New Jersey's State Medicaid plan provides that a child's plan must state which related services are to be provided. For 1 of the 100 claims in our sample, the associated school could not provide a child's plan.

CAUSES OF THE IMPROPER CLAIMS

Although PCG incorporated corrective actions recommended in one of our prior audit reports (A-02-03-01003) into their SEMI provider handbook, our review found deficiencies similar to those previously reported. We found two main causes of the improper claims.

Providers Did Not Comply With Federal Requirements

Some of the improper claims occurred because school-based health providers did not comply with Federal requirements. The State handbook specifies that per Federal requirements, speech therapy services must be provided by or under the direction of a ASHA-certified speech-language pathologist. In addition, the State handbook reiterates Federal requirements related to referrals for speech therapy, which must be referred by a licensed practitioner of the healing arts within the scope of his or her practice under State law. However, we found 24 claims for speech therapy services that did not meet these Federal requirements.

New Jersey Did Not Adequately Monitor School-Based Health Claims

Based on our review, we determined that monitoring of school-based health providers' claims for compliance with program requirements by New Jersey and PCG was not effective. From June 2007 through September 2007, PCG conducted 20 monitoring visits and found errors at 17 school districts. These visits identified deficiencies similar to those found in our audit. PCG submitted its findings to New Jersey, which made the necessary adjustments to the specific claims identified in PCG's reviews.

RECOMMENDATIONS

We recommend that New Jersey:

- refund \$5,613,885 to the Federal Government and
- consider the results of this review in its evaluation of our prior recommendations to ensure that its school-based health providers comply with Federal and State requirements.

NEW JERSEY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In its comments on our draft report, New Jersey disagreed with our recommended refund. In addition, New Jersey questioned our sampling methodology and disagreed with what we accepted as valid referrals. However, New Jersey also described corrective actions that it has taken in response to our second recommendation.

New Jersey provided additional documentation for six claims we questioned in our draft report. After reviewing this documentation, we determined that some services for five claims complied with Federal and State requirements and revised our findings and recommended refund accordingly. We have summarized New Jersey's comments, along with our response, below, and we have included those comments in their entirety as Appendix D.

Sampling Methodology

New Jersey Comments

New Jersey questioned our sampling methodology used to determine the estimate for the overpayment associated with unallowable claims for school-based health services and said that it resulted in inaccurate findings and recommendations. New Jersey stated that our sample size did not appear large enough for an accurate estimate of overpayments. New Jersey also said that our sample should have been stratified based on the type of service and the beneficiary's medical condition (i.e., type of disability).

Office of Inspector General Response

We followed our longstanding statistical sampling policies with regard to both sample size and stratification. The Departmental Appeals Board (Board) has supported the Office of Inspector General's (OIG) use of statistical sampling to calculate disallowances in accordance with these policies. Specifically, in one case involving the OIG's use of statistical sampling, the Board stated that "Since the individual case determinations were voluminous, the auditors used

statistical sampling techniques in lieu of examining all records to establish the amount of the disallowance, an approach upheld in principle by courts and this Board before.”¹²

Additional Documentation

New Jersey Comments

New Jersey provided additional documentation for 6 of the 53 claims (S1-4, S1-7, S1-14, S1-46, S2-35, and S2-48) questioned in our draft report.¹³

Office of Inspector General Response

We reviewed the documentation that New Jersey provided for the six claims and accepted some services based on the documentation. Specifically, we accepted some services that we previously questioned because of referral or documentation issues; however, we continue to question services related to one claim (S1-7) that still did not meet documentation requirements. Additionally, we continue to question speech therapy services that did not meet referral and documentation requirements for a portion of another claim (S2-48). We have revised our findings, recommended refund, and Appendix C accordingly.

Referrals

New Jersey Comments

New Jersey stated that for two sample claims (S1-5, S1-41) the individual who referred the speech therapy services was certified by ASHA but was not licensed by the State’s licensing body. For a third sample claim (S2-41), New Jersey stated that the referral was signed by a non-licensed speech therapist who had taken a State exam, “proving educational equivalency needed for ASHA certification.” New Jersey stated that, because ASHA-certified individuals can provide speech therapy services, referrals for speech therapy services by ASHA-certified individuals should be allowed.

Office of Inspector General Response

We disagree with New Jersey’s statement that an unlicensed individual can refer services. Pursuant to 42 CFR § 440.110 (a)(b)(c), referral or prescription from a physician or another licensed practitioner of the healing arts is required for physical therapy; occupational therapy; and services for individuals with speech, hearing, and language disorders.

¹² California Department of Social Services, DAB No. 816 (1986); see also Maine Dept. of Health and Human Services, DAB No. 2292 (2009); New York State Office of Children and Family Services, DAB No. 1984(2005); California Department of Social Services, DAB No. 524 (1984); Ohio Department of Public Welfare, DAB No. 226 (1981); and precedents cited therein.

¹³ In its comments, New Jersey stated that it also provided additional documentation for a seventh claim (S1-3). New Jersey officials subsequently stated that they did not have any additional information to support this claim.

Attendance

New Jersey Comments

New Jersey stated that five sample claims (S1-6, S1-17, S2-29, S2-39, S2-40) had service documentation to support the claims although attendance data for the corresponding student indicated an absence. New Jersey indicated that there are multiple reasons that an error could have occurred in documenting attendance and that “valid service documentation data” should be accepted as proof of service delivery.

Office of Inspector General Response

Students must be in attendance on a given day to receive school-based health services on that day. To determine if a student was in attendance on the date of a sampled service, we reviewed the school register to determine if school was in session and the student was marked present. We then compared the school’s attendance record to the SEMI service record. For the five sample claims, the school register indicated that the student was absent from school. Further, for one of the sample claims (S1-6), the service record indicated that the student received services on two Federal holidays, when the school was closed. Therefore, we did not accept the billed SEMI services for these claims.

Transportation

New Jersey Comments

New Jersey stated that one sample claim (S2-36) should be allowed because all students in day training centers receive specialized transportation because of the severity and uniqueness of their disabilities. Specifically, New Jersey stated that wheelchair lifts, nurses, and aides are examples of essential resources used when transporting these students to and from day training centers.

Office of Inspector General Response

The bus log that supported the transportation services for sample claim S2-36 did not identify the individual students that were provided transportation. Rather, the log contained the number of students present on the bus—a number that varied throughout the month. Without some way to identify the students present (e.g., initials or names), we were unable to determine whether the student associated with the sample claim used the specialized transportation for the dates he received related services.

APPENDIXES

APPENDIX A: SAMPLE DESIGN AND METHODOLOGY

POPULATION

The population was Medicaid claims for school-based services provided by school-based health providers in New Jersey that were submitted for Federal Medicaid reimbursement by Public Consulting Group, Inc. The claims were for service dates from September 1, 2003, through June 5, 2007, with payment dates from April 6, 2005, through June 27, 2007 (our audit period).

SAMPLING FRAME

The sampling frame was a computer file containing 157,114 student-months representing all claims for school-based services provided by school-based health providers in New Jersey with payment dates from April 6, 2005, through June 27, 2007. The total Medicaid paid amount for the 157,114 student-months was \$90,731,406 (\$45,365,703 Federal share). State officials extracted the database from the paid claims' files maintained at the Medicaid Management Information System fiscal agent.

SAMPLE UNIT

The sample unit was an individual student-month. Each sample unit represents all services provided to an individual student for a month during our audit period that were billed for Federal Medicaid reimbursement by Public Consulting Group, Inc.

SAMPLE DESIGN

We used stratified random sampling to evaluate the population of Medicaid school-based claims. To accomplish this, we separated the sampling frame into two strata:

- Stratum 1—less than \$1,500: 130,854 student-months
- Stratum 2—equal to or greater than \$1,500: 26,260 student-months

SAMPLE SIZE

We selected a sample of 100 student-month claims with 50 items from each stratum.

SOURCE OF THE RANDOM NUMBERS

We used the Office of Inspector General, Office of Audit Services' statistical software, RAT-STATS, to generate the random numbers.

METHOD OF SELECTING SAMPLE ITEMS

We sequentially numbered the student-months in each stratum. After generating 50 random numbers for each stratum, we selected the corresponding frame items. We then created a list of the 100 sample items.

ESTIMATION METHODOLOGY

We used RAT-STATS to calculate our estimates. We used the lower limit of the 90-percent confidence interval to estimate the overpayment associated with the unallowable claims.

APPENDIX B: SAMPLE RESULTS AND ESTIMATES

Sample Details and Results

Stratum Number	Claims in Frame	Value of Frame (Federal Share)	Sample Size	Value of Sample (Federal Share)	Unallowable Claims	Value of Unallowable Claims (Federal Share)
1	130,854	\$20,479,208	50	\$7,839	21	\$2,077
2	26,260	24,886,495	50	51,402	15	5,008
Total	157,114	\$45,365,703	100	\$59,241	36	\$7,085

Estimated Overpayment Associated with the Improper Claims
(Limits Calculated for a 90-Percent Confidence Interval)

Point Estimate	\$8,066,382
Lower Limit	\$5,613,885
Upper Limit	\$10,518,880

APPENDIX C: SUMMARY OF DEFICIENCIES FOR EACH SAMPLED CLAIM

Legend

1	Referral or prescription requirements not met
2	Federal provider requirements not met
3	Services not provided or not supported
4	Services not documented in child's plan

Office of Inspector General Review Determinations on the 100 Sampled Claims

Claim No.	Deficiency 1	Deficiency 2	Deficiency 3	Deficiency 4	No. of Deficiencies
S1-1					0
S1-2					0
S1-3	X				1
S1-4					0
S1-5	X				1
S1-6			X		1
S1-7			X		1
S1-8					0
S1-9					0
S1-10					0
S1-11					0
S1-12		X	X		2
S1-13					0
S1-14					0
S1-15		X			1
S1-16					0
S1-17			X		1
S1-18	X	X			2
S1-19	X	X			2
S1-20					0
S1-21		X			1
S1-22					0
S1-23	X			X	2
S1-24					0
S1-25					0
S1-26					0
S1-27			X		1
S1-28					0
S1-29		X			1
S1-30	X	X			2
S1-31	X	X			2
S1-32	X				1
S1-33					0

Claim No.	Deficiency 1	Deficiency 2	Deficiency 3	Deficiency 4	No. of Deficiencies
S1-34		X			1
S1-35					0
S1-36		X			1
S1-37					0
S1-38					0
S1-39					0
S1-40	X				1
S1-41	X				1
S1-42					0
S1-43					0
S1-44					0
S1-45					0
S1-46					0
S1-47		X			1
S1-48					0
S1-49					0
S1-50					0
S2-1					0
S2-2					0
S2-3					0
S2-4					0
S2-5					0
S2-6					0
S2-7					0
S2-8					0
S2-9					0
S2-10			X		1
S2-11					0
S2-12					0
S2-13					0
S2-14					0
S2-15					0
S2-16	X				1
S2-17					0
S2-18					0
S2-19			X		1
S2-20					0
S2-21					0
S2-22					0
S2-23					0
S2-24					0
S2-25					0
S2-26	X	X			2

Claim No.	Deficiency 1	Deficiency 2	Deficiency 3	Deficiency 4	No. of Deficiencies
S2-27					0
S2-28		X			1
S2-29			X		1
S2-30					0
S2-31					0
S2-32					0
S2-33	X	X			2
S2-34					0
S2-35					0
S2-36			X		1
S2-37					0
S2-38					0
S2-39			X		1
S2-40			X		1
S2-41	X	X			2
S2-42					0
S2-43			X		1
S2-44		X			1
S2-45					0
S2-46					0
S2-47					0
S2-48	X		X		2
S2-49	X		X		2
S2-50					0
Category Totals	16	16	14	1	47
36 claims in error					

APPENDIX D: NEW JERSEY COMMENTS



CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

State of New Jersey
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
PO Box 712
TRENTON, NJ 08625-0712

JENNIFER VELEZ
Commissioner

JOHN R. GUHL
Director

August 2, 2010

James P. Edert
Regional Inspector General for Audit Services
Department of Health and Human Services
Office of Inspector General
Office of Audit Services Region II
Jacob K. Javits Federal Building
26 Federal Plaza – Room 3900
New York, NY 10278

Report Number: A-02-07-01052

Dear Mr. Edert:

This is in response to your letter dated May 6, 2010 concerning the Department of Health and Human Services, Office of the Inspector General's (OIG) draft report entitled "Review of New Jersey's Medicaid School-Based Health Claims Submitted by Public Consulting Group, Inc." Your letter provides the opportunity to comment on this draft report.

The objective of this review was to determine whether New Jersey's Medicaid school-based health claims submitted by its billing agent, Public Consulting Group, Inc. (PCG), complied with Federal and State requirements. The review period was April 6, 2005 through June 27, 2007.

The draft audit report concluded that New Jersey's claims for reimbursement of Medicaid school-based health services submitted by PCG did not fully comply with Federal and State requirements. While 60 of the 100 school-based health claims in the sample fully complied with all Federal and State requirements, the remaining 40 did not meet one or more of the applicable requirements. The report states that the deficiencies occurred because: (1) school-based health providers did not comply with guidance related to Federal requirements; and (2) New Jersey did not adequately monitor school-based health claims for compliance with Federal and State requirements. Based upon the sample results, the auditor estimated that New Jersey was improperly reimbursed \$6,369,708 in Federal Medicaid funds during the April 6, 2005 through June 27, 2007 audit period.

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We appreciate the opportunity to provide this response to the draft OIG audit report. Following are the auditors' recommendations and the Division of Medical Assistance and Health Services (DMAHS) responses:

1. The OIG recommends that New Jersey should refund \$6,369,708 to the Federal Government

The State does not concur with this recommendation. Based on the analysis outlined below, which was performed with the assistance of a statistician, we believe that the sampling methodology used by the auditor resulted in inaccurate findings and recommendations.

Analysis of OIG Sampling Methodology

To select a probability sample of a population in order to accurately estimate some characteristic of the total population, it is necessary to define the population.¹ This definition of a population for a particular study is called the *sampling frame*. Individual elements and units within the sampling frame are selected for a study using various kinds of sampling procedures.

The selection of *random samples* is the preferred method for studies in which population characteristics are estimated based on a sample because random sampling leads to extremely accurate estimates when the sampling procedures are appropriate for what we know (or can assume) about the characteristics of the total population. Random samples can be selected by *simple random sampling* or by *stratified random sampling*. Simple random sampling leads to accurate results if we know or can assume that the population is relatively *homogenous* with respect to the questions of interest. For instance, a sample of student-months representing the rate of non-compliance of all Medicaid school-based health claims submitted for *one type of service* for individuals within *one type of disability category* selected by *simple random sampling* may be extremely accurate for estimating the overall rate of non-compliance.

If known or assumed, however, that the population is *heterogeneous* with respect to the questions of interest so that the findings are likely to differ substantially within subgroups of the population, the validity of the estimates of population characteristics is greatly improved by *stratified random sampling*. Stratified random sampling ensures that the proportion of individual units within each subgroup of the sample matches the proportion of individual units within each subgroup of the total population and thus the combined estimates derived from subgroups within the sample represent the characteristics of the total population accurately.

Medicaid claims for school-based services in New Jersey include a broad array of different types of services. The services for which school-based health claims are submitted include:

1. Rehabilitative services—occupational, physical, and speech-language therapies; psychological counseling and psychotherapy; and nursing;

¹McBurney, D. H., & White, T. L. (2007). *Research Methods*. Thomson Wadsworth, Belmont, CA.

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2. Evaluation services identifying the need for specific services and prescribing the range and frequency of services that the student requires which may include reevaluation or review of the current services specified in the child's plan; and
3. Specialized transportation services in a vehicle adapted to serve the needs of the disabled, including specially adapted school buses, when provided on the same day as a related service and when transportation is included in the child's plan.

Each subgroup of services is quite likely to differ substantially in ways that may impact overall estimates of noncompliant claims for the entire population of school-based health claims. In addition to the cost of services, the proportion of claims submitted varies by type of service. The proportion of claims submitted as well as the extent to which multiple claims are submitted for services provided across all three major types of services differs substantially by disability group as well with some lower-incidence disability groups accounting for a relatively high proportion of claims. Since it is likely that types of noncompliance— services not provided or supported, services lacking a referral or prescription, services meeting Federal provider qualification requirements, and services not documented in the child's plan— are also correlated with the type of services provided, any estimation procedure based on a sampling frame that does not take these factors into account in estimating the incidence of noncompliant claims overall will not be accurate.

The sampling frame for the estimates of noncompliance reported in the draft report entitled *Review of New Jersey's Medicaid School-Based Health Claims Submitted by Public Consulting Group, Inc.*, is described as "a computer file containing 157,114 student-months representing all claims provided by school-based health providers in New Jersey with payment dates from April 6, 2005 through June 27, 2007." The sample unit was an individual student-month representing all services provided to an individual student for a month during the audit period.

Despite the heterogeneity of types of claims filed and likely correlations among types of claims and types of claim deficiencies and disability groups, the only variable used to define the sampling frame for the OIG study was the level of reimbursement. The population of student-months identified for the audit was stratified in this way:

Table 1. OIG sample results and estimates

Stratum Number	Claims in Frame	Value of Frame (Federal Share)	Sample Size	Value of Sample (Federal Share)	Unallowable Claims	Value of Unallowable Claims (Federal Share)
1 (<\$1500)	130,854	\$20,479,208	50	\$7,839	24	\$2,210
2 (≥\$1500)	26,260	\$24,886,495	50	\$51,402	16	\$5,936
Total	157,114	\$45,365,703	100	\$59,241	40	\$8,146

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This sampling frame does not accurately estimate noncompliant claims because key factors likely to be highly correlated with noncompliance estimates such as type of service—rehabilitation, evaluation, and transportation—and disability groups are not taken into account along with the dollar amount of the claims.

It is important to note, however, that even this analysis does not accurately reflect the characteristics of the defined strata as shown by the table below. The purpose of defining a sampling frame is to take the proportionality of the subgroups in the sample and population into account in deriving the population estimates. As shown in Table 2, this was not done for this analysis. The total value of claims in Stratum 1 was 45% of the total. In the sample, however, the value of claims for Stratum 1 was only 13% of the total value. The sample that was drawn does not accurately reflect the relative value of claims in each stratum.

Table 2. OIG sample results and estimates with population and sample percentages

Stratum Number	Claims in Frame	Value of Frame (Federal Share)	%	Sample Size	Value of Sample (Federal Share)	%	Unallowable Claims	Value of Unallowable Claims (Federal Share)
1	130,854	\$20,479,208	45%	50	\$7,839	13%	24	\$2,210
2	26,260	\$24,886,495	55%	50	\$51,402	87%	16	\$5,936
Total	157,114	\$45,365,703	100%	100	\$59,241	100%	40	\$8,146

The May 6, 2010 draft report is silent as to the justification for selecting a sample size of only 50 student-month claims from a stratum with a total of 130,854 student-months and a sample size of only 50 student-month claims from a stratum with a total of 26,260 student-months for a total of only 100 student-month claims from a total of 157,114 student-month claims. We do not believe these samples are large enough for an accurate estimate of overpayment for unallowable school-based Medicaid claims in New Jersey. As we discussed in our analysis of the sampling methodology, there is a great deal of variance in types of claims filed and the amount of those claims. When it is known that population characteristics vary greatly, it is usual for researchers studying that characteristic to select fairly large samples in order to obtain valid estimates of the population characteristic. Given the broad range of types of and amounts of claims, it does not appear that results found for this very small sample of claims generalize across the entire population of school-based Medicaid claims in New Jersey during the period under investigation.

The sampling frame chosen for this investigation was simply not adequate to provide a valid estimate of the amount of overpayment associated with unallowable claims for school-based Medicaid services in New Jersey. The sampling frame chosen fails to account for many key variables such as type of service and type of disability served likely to be correlated with both the value of claims and types of deficiencies in claims. In addition, given the known variance

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across types of claims and the amount of claims across the state, the sample sizes chosen were too small to justify generalization of the results to the entire population of claims in the state.

Additional Documentation Provided to the OIG

Additional documentation to support citations 1-3, 1-4, 1-7, 1-14, 1-46, 2-35 and 2-48 was located and forwarded to the auditor.

- Two (2) ST services for citation 1-3 - total FFP is \$53.23
- Three (3) ST services for citation 1-4 - total FFP is \$79.85
- One (1) Counseling service for citation 1-7 - total FFP is \$51.24.
- One (1) Counseling service for citation 1-14 - total FFP is \$26.62
- One (1) Counseling service for citation 1-46 - total FFP is \$26.62
- Three (3) PT services for citation 2-35 - total FFP is \$79.85
- One (1) Evaluation service and three (3) PT services for citation 2-48 - total FFP is \$856.82

These claims represent \$1,174.23 in FFP, which we believe are fully supported. We have been advised by the OIG that they will review the additional documentation and include the results of their review along with any appropriate adjustments in their final report.

Analysis of Speech Qualifications

Some of the citations, specifically 1-5 and 1-41, are related to speech services provided by individuals having the ASHA certification and not a NJ state license. While we agree that the provider of the referral did not have the NJ license, they *were* ASHA-certified as required by Federal Medicaid regulations. We believe that meeting the federal standard is acceptable for the speech therapy services in question. Therefore those claims should be acceptable. For citation 1-5 there are five (5) ST services with a total FFP of \$133.08 that we believe should be allowed; for citation 1-41 there are four (4) ST services with a total FFP of \$106.46 that we believe should be allowed.

For citation 2-41, the referral was signed by a non-licensed speech therapist. The therapist in question had taken the Praxis in August 2006, proving educational equivalency needed for ASHA certification. We believe this is a valid claim with an FFP of \$53.23.

We believe the items 1-5, 1-41 and 2-41 are valid claims, with a total of \$292.77 in FFP.

Attendance

There are several citations where documentation is in place to support the claim, but the auditor's review of attendance data from the school's Student Information System, indicates an absence. We strongly believe that the service documentation data supports the claims, and that there are multiple reasons an error could have occurred in documenting attendance. There are policy and logistical issues that make attendance data less reliable than service documentation data. For example, if a student is late, he may be marked absent but still

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receive a service later in the school day. Similarly, if a student leaves early he could be marked absent but still have received a service prior to departure.

We believe that items 1-6, 1-17, 2-29, 2-39 and 2-40 are valid claims, with a total of \$342.03 in FFP

Transportation

In one case the auditor disallowed 13 units of transportation for a student that attended a New Jersey Day Training Center, specifically Passaic County. The auditor cited the direct services as valid claims but the corresponding transportation services were disallowed because the bus log did not identify the specific student names. As was mentioned to the auditor on numerous occasions, all students that are placed in the Day Training Centers receive specialized transportation due to the severity and uniqueness of their disabilities. Wheelchair lifts, nurses, aides, etc. are all essential resources when transporting these students to and from the centers. We believe that item 2-36 is a valid claim in the amount of \$563.65.

With the analysis performed and additional documentation presented, we believe the total unallowed FFP should be adjusted downwards, at a minimum, to \$5,773.32. This is a reduction from the \$8,146 cited in the report that was used to calculate the disallowance.

2. New Jersey should consider the results of this review in its evaluation of prior recommendations to ensure that its school-based health providers comply with Federal and State requirements.

Guidance to School Districts

We would like to stress that the State of New Jersey has taken a number of steps to provide guidance to the school districts. We have several staff devoted to administering the project, including coordination of relevant state agency efforts and communication to school districts. Communications include an updated provider manual, a SEMI reference website, and training sessions. Since the time period for which this audit covers, we have taken additional steps to inform Local Education Agencies (LEA) of their responsibilities in meeting both Federal and State requirements.

- Training sessions are done both regionally and on a one-on-one basis with district administrators.
- Regional meetings are held twice a year and are well attended by districts. The vendor is required to cover the regulations of the SEMI program at these meetings.
- Each district submitting claims has participated in an administrator training with the vendor, where the SEMI regulations are covered directly with district.
- We have updated our SEMI reference website and now include the SEMI Provider Handbook, as well as other policy documents that explicitly state how to correctly implement the program.
- The vendor has provided a toll free number and an online message board for districts to access.

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Current Pre-Payment Audit Process

We have implemented an electronic tool for school districts to use to document health related services and implemented mandatory compliance checks where districts provide additional data (IEP dates, provider qualifications, and referral data) before claims are processed. This policy now requires all LEAs to upload compliance data prior to claiming, so that our vendor can match the data to claims submission. If required data is not provided, a claim is not processed.

The State has improved its monitoring of the school-based health providers. The current vendor has implemented stronger post claiming quality assurance procedures, which includes a yearly on-site monitoring of a sample set of districts provided by the State. Any lapses in compliance are explicitly stated to the district with suggestions on how to align their internal processes to match Federal and State regulations. Claims that do not comply with Federal and State requirements are appropriately adjusted.

District Training

Training is an imperative component of a quality program. Therefore, our vendor has implemented a multi-tiered approach to training. Districts receive concentrated training during the start-up and implementation of the program, with follow up training provided in subsequent years. A typical district will receive the following initial trainings:

- **Start-Up Meeting** – review of program rules and regulations with district administrators
- **Administrator Training** – district administrators learn to utilize software provided by vendor and how to maintain compliance with program requirements
- **Staff Training** – other district staff learn how to appropriately utilize software by vendor and learn Medicaid rules

The number of training sessions can vary based on districts requests and district need.

To supplement initial training, PCG provides follow up sessions to reinforce program requirements. All districts have the opportunity to attend the following trainings:

- **Regional Training** – district administrators attend training held twice a year to review program regulations, as well as discuss any updates or changes to the program
- **Online Trainings** – provided on a weekly basis, available to all districts statewide. Topics can include: administrator role and responsibility, other district staff training, and program regulations.

In total, PCG has conducted nine Regional Trainings, the most recent being April 2010. Prior to June 30, 2007 (the end date of the report) PCG had conducted three Regional Trainings. This ensures that districts that do not actively reach out to PCG have an opportunity to review program regulations, ask questions and receive any clarification needed.

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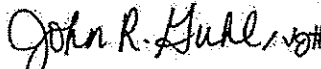
All districts have the opportunity to attend the online trainings provided by the vendor. These trainings cover aspects of Medicaid claiming, including program start-up, the role and responsibilities of the district coordinator, and specific topic-based trainings aimed at program compliance. In total, the vendor has provided 363 online trainings that are open to all districts. Training schedules are sent out monthly, and provide both conference call and web login information. Trainings aimed at program regulations and the district's responsibility to maintain compliance with the regulations account for 235 out of the 363 online trainings. The vendor continues to hold online sessions every week.

In addition to direct training, the vendor provides helpdesk support for district administrators and staff regarding program regulations. Each district is assigned a client representative from the vendor. This facilitates a working relationship between the district and the vendor and ensures district staff members have a resource available to answer any questions.

Overall, the State has taken previous results and enhanced its training, resources, pre-payment audit processes and post-payment processes to ensure compliance with Federal and State requirements by all participating LEAs and health providers.

If you have any questions or require additional information, please contact me or Richard Hurd at (609) 588-2550. We would like to thank the OIG audit team for their professionalism throughout our review of their findings and recommendations. In addition, we also appreciate their courtesy in providing to us the documentation that they were able to obtain from the school districts

Sincerely,



John R. Guhl
Director

JRG:H

c: Jennifer Velez
Richard Hurd

I would like to thank this committee for the opportunity to meet with you. I am Rebekah Novemsky the parent of 2 sons who receive very different special education services from the South Orange Maplewood School district. There is a need for person centered thinking when designing and implementing individual Education Plans for students. I am the Co-chair of the Family Support Planning Council and a member of the Executive Board of the South Orange Maplewood Special Ed PTO.

It is essential that the Administration and Legislative leadership uphold federal disability civil statues such as the Americans with Disabilities Act (ADA) and the Individuals with Disabilities in Education Act (IDEA)

Over 40 years of research and experience how demonstrated that the education of children and youth with disabilities can be made more effective by:

- Having high expectations for students and ensuring their access to the general curriculum to the maximum extent possible;
- Strengthening the role of parents and ensuring that families have meaningful opportunities to participate in the education of their children at school and a home;
- Coordinating all educational reform efforts in order to ensure that students benefit from all such efforts and that special education is a service and not a place where they're sent;
- Providing appropriate special education and related services and supports in inclusive classrooms and natural environments;
- Providing a full range of transition to adult life services to enable students to develop skills needed for employment, independent living and full participation in civic and community life as adults; this involves a coordinated effort between schools and Division of Vocational Rehabilitation and Division of Developmental Disabilities when appropriate;
- Implementing strategies to develop independence and self-advocacy skills in students throughout their education;
- Supporting high quality intensive professional development for all personnel in order to ensure that they have the skills and knowledge necessary to enable students to meet challenging expectations established for all children;
- Providing incentives for whole school approaches that support positive behavior support and pre referral interventions to reduce the need to label students in order to address their learning needs (20 U.S.C. Chapter 33 Sec 1400)

Proposals that will negatively affect the above listed strategies will be regarded as destructive to the legal and evidence based basis for special education in New Jersey.

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We have concerns that the new proposed budget adjustments on private special education schools which are meant to ensure responsible use of school district funds They were largely created to reduce nepotism and abuse of funds. That in and of itself is necessary and prudent. However, one part of the proposed legislation could have a disastrous impact on teachers and therapists and, in turn, students.

This is that change: "Freeze on all maximum salaries except certain related services positions." The maximum salaries are based on the top salaries in the state or the country, depending on job title. This is supposed to take place for seven years.

In general, there is not a large pool of teachers and therapists for schools to pick from when it comes to hiring, or the agencies who serve schools and feed therapists to them. This cap will only make it that much more challenging to hire good people. Already, some agencies that hire therapists for schools are struggling to find qualified people at the current cap of \$72 (occupational therapists) and \$74 (physical therapists) per hour.

A cap like this could pose retention problems, with therapists ultimately deciding to go into private practice, which pays far better—our current OT gets \$120 per hour. A cap like this would also largely prohibit schools from attracting new talent. These therapists are good people, to be sure, but they have families to support. It would not be prudent for them to take jobs without salary growth.

It is our children who will be missing much needed related services. We ask that this be considered.

Respectfully
Rebekah Novemsky

1109v

Twice Exceptional (2e)

Sonya Selig
sonyaselig@gmail.com
(917) 865-2657

"Gifted students with disabilities may appear "not impaired enough" for disability-related services if they perform at grade level and "not gifted enough" to receive gifted education services." This is from the National Association for Gifted Children's Position Statement, *Ensuring Gifted Children with Disabilities Receive Appropriate Services: Call for Comprehensive Assessment*.

Thank you for inviting me here today. I am Sonya Selig, a parent of two middle school students in Maplewood. I have volunteered in public education since 2009 and I currently sit on the executive committee for the South Orange-Maplewood Special Education PTO. This year I also established a parent support group for twice exceptional, or 2e, children called SOMA 2e.

2e kids are intellectually gifted and also have learning differences or disabilities. 2e kids are typically asynchronous, meaning they have various developmental ages. A 2e child can be 7 chronologically and 14 intellectually, while writing like a 6-year-old and struggling with meltdowns like a 3-year-old. Often their giftedness masks their disability, or their disability masks their giftedness. As a result, many 2e kids do not perform to their full intellectual ability. It is not uncommon that the more profoundly gifted a 2e child is, the poorer he is likely to perform in the classroom. A 2e child who does well academically may be putting in twice the effort to reach that point, which is not a sustainable strategy. Anxiety and depression is not uncommon – even at very young ages.

Their asynchrony can make it very difficult to diagnose 2e learning challenges, and, according to Gifted Homeschoolers Forum, some professionals "may be reluctant to do so if the child is performing at age/grade level. But, these kids need to be allowed to perform at their intellectual age level. Holding them back causes both short and long-term harm, and bars them from the benefits and joys of learning to perform at their potential... The universal goal to support 2e children is to meet their intellectual needs above chronological age level, while scaffolding their weaknesses." Teach to their strengths. My school district has embraced this concept with our recent Access and Equity policy, but this isn't available to students until secondary grades, and isn't the standard for New Jersey.

The National Education Association has published a guide entitled "The Twice-Exceptional Dilemma", where they state, "It is important for educators to recognize that extremes of ability can exist within any one student; students can have disabilities and still be considered gifted."

The NEA hypothesizes that addressing the learning needs of twice exceptional children will help close achievement gaps in this student population. According to the NEA guide, "Twice exceptional students...are under-identified in our schools. As a result, they do not receive the most appropriate services to meet their unique needs and are often underachievers in our classrooms. Along with all other children, they deserve a great public school that has the tools, resources and programs to meet their needs."

Some families chose to home school their 2e children because public school cannot offer them an education where both their disabilities are supported and their intellect challenged. There are also private schools designed specifically for 2e kids such as the Flex School in Fanwood, NJ. On a national level, the Department of Education under the previous

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administration reminded State Directors of Special Education to recognize and support twice exceptional students in a 2015 memorandum. The Montgomery County Public Schools in Maryland, and the Colorado, Idaho and Virginia Departments of Education have developed successful guides or programs designed to meet the complex needs of 2e kids. Additionally, there are nationally recognized resources, including The Davidson Institute, the 2e Newsletter, Supporting the Emotional Needs of the Gifted (SENG), and Twice Exceptional Children's Advocacy (TECA). In addition to the earlier mentioned position statement, the National Association for Gifted Children has published a White Paper, "Twice-Exceptionality". Links to these resources are included below.

Currently, New Jersey does not have a policy or statement addressing twice exceptional students. The only mention can be found in one clarifying statement in the NJ DOE's Curriculum and Instruction FAQs for Gifted and Talented Services, question number 15. While that statement helps clarify eligibility regarding 2e kids, the requirements for district-level gifted and talented programs may be inherently obstructive.

My 14-year-old son is twice exceptional. He was born with an "invisible disability", a genetic anomaly that fortunately does not effect intelligence, but does come with a spectrum of possible disabilities - the most common being expressive language delays. In addition to a quick wit, biting sense of humor, intelligence, humility, compassion and a quiet grace, my 6-foot tall, thin as a rail son who loves reading, collecting books, classic cars, heavy metal music and distance running has dysgraphia, an auditory processing disorder, executive functioning issues, and slow processing speed. He also has an IQ score that places him above 95th percentile in math and above the 98th percentile language arts. Last year he was tested for dyslexia, but we learned that he actually suffers from severe anxiety, which apparently can impact reading fluency.

He is in 8th grade and has the yo-yo report card typical of a 2e kid: As and Bs in comp design, science, social studies, and language arts, a C in phys ed (because tying and untying his shoes is very difficult so he refuses to change for class), and an F in advanced math-Algebra 1 (he gets As and Bs on the tests, but won't show his work). When he was in seventh grade his language arts class studied poetry. The assignment was to write five poems in various styles. The whole grade would then vote on each other's poems for submission to, and the winners of, the 7th grade "Poetry Grammys". It took my son seven uninterrupted hours to write each poem. Seven hours for one poem - times five. It was excruciating to witness. He pushed away any help, as he'd become fiercely independent about his school work. In the end, his poetry was incredible: it was beautiful, moving, funny, insightful, sensitive, and detailed. It betrayed what goes on in his beautiful mind when he's so quiet. I have attached two of his poems to share with you - *Omaha Beach 1944* was nominated for a Poetry Grammy. When he came home and told he, his face was shining. It was wonderful!

I support New Jersey legislators and the NJ DOE in the research, design and implementation of any and all policies and programs necessary to address the complex learning needs of twice exceptional children.

"If there is one thing teachers and parents can do to empower twice-exceptional children, it's to help identify and nurture their talents and strengths first. By understanding their

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own talents, 2e children build self-confidence, create positive identities, and find like-minded friends. These are essential elements for coping with their challenges, finding their path in life, and being able to pursue their dreams." – The National Association for Gifted Children

Appendix

- National Association for Gifted Children Position Statement, *Ensuring Gifted Children with Disabilities Receive Appropriate Services: Call for Comprehensive Assessment*, October 2013
<https://www.nagc.org/sites/default/files/Position%20Statement/Ensuring%20Gifted%20Children%20with%20Disabilities%20Receive%20Appropriate%20Services.pdf>
- National Association for Gifted Children, White Paper, Twice Exceptionality, March 2009
<https://www.nagc.org/sites/default/files/Position%20Statement/twice%20exceptional.pdf>
- Gifted Homeschoolers Forum, Twice Exceptional brochure, 2013
<http://giftedhomeschoolers.org/docs/ Twice-Exceptional-brochure-11-2013.pdf>
- The National Education Association, *The Twice-Exceptional Dilemma*, 2006
<http://www.nea.org/assets/docs/twiceexceptional.pdf>
- The Flex School, <http://www.flexschool.net>
- Melody Musgrove, Ed.D., Director, Office of Special Education Programs, Memorandum to State Directors of Special Education, *Letter to Delisle: Children with disabilities with high cognition*, April 15, 2015
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- Montgomery County Public Schools, *Twice Exceptional Students At A Glance*,
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- Office of Curriculum and Instructional Programs and Office of Special Education and Student Services, Montgomery County Public Schools, Rockville, Maryland, *Twice Exceptional Students, A Staff Guidebook for Supporting the Achievement of Gifted Students with Disabilities*, 2015
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- Colorado Department of Education, *Twice-Exceptional Students, Gifted Students with Disabilities, Level 1: An Introductory Resource Book*, October 2017
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- Idaho Department of Education, *Twice Exceptional: Students With Both Gifts and Challenges or Disabilities*, 2010, <https://sde.idaho.gov/academic/gifted->

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[talented/files/manuals/Twice-Exceptional-Students-Both-Gifts-Challenges-or-Disabilities.pdf](#)

- Virginia Department of Education, *Supporting the Identification and Achievement of the Twice-Exceptional Student*, September 2010, http://www.doe.virginia.gov/instruction/gifted_ed/twice_exceptional.pdf
- The Davidson Institute, <http://www.davidsongifted.org>
- The 2e Newsletter, <http://www.2enewsletter.com>
- SENG, <http://sengifted.org>
- TECA, <https://www.teca2e.org>

Attachments

- Selig, P., *Imagery Poem: Omaha Beach 1944*, May 2016
- Selig, P., *Concrete*, May 2016

Sandy beach where my friends fell
The blood's redness staining the sand
Ears ringing from the loudness
Of the gunfire all around me

Sloshing boats in the water
Shouting men under fire
The heavy gear slowing soldiers
Grenades blowing guns apart

Explosions causing hazy vision
Tanks making a path
Mortar shells blow the tanks
Flaming metal raining down

Hope diminishing with every shot
Wounded men moaning
Now there's blood pouring down my face
My eyes start to unfocus
The world is dark

Subject: Omaha Beach 1944
Mood: Scared
By: P. Selig, 2016



Concrete
By P. Selig, 2015

The walking around with no-where to sit
The artwork which people don't care a bit
The horrid guided tours which give such bores
The well-paid janitors that clean the floors
Dinosaurs in spaces lining the walls
Bright lights showing off the amazing halls
Exhibit after exhibit as the tour guide blabs on
As if he thinks we need a picture drawn
The most useful tool needed is given at the start
A map of the place sure makes you feel smart
The fancy, but hollow music tires the ears
Over the screaming of children that never disappears

22 March 2017
Joint Committee on the Public Schools
Hearing on Special Education

Thank you to Senator Rice and to Assemblywoman Jasey, and to the entire Committee, for taking the time to go around the state to engage with stakeholders on the issue special education. My name is Julie Borst. I am a parent of a student with a disability, a special education parent advocate, and an organizer/member of Save Our Schools NJ. The testimony I am providing today is my own.

You've already heard testimony about funding, and from me, specifically special education funding and the impact of lack of resources. The current New Jersey headlines include what is happening to students with disabilities in Paterson. It's shameful. The negative effects on students and their families are big and lasting.

My own family's experiences in New Jersey schools have been varied, and the negative parts have been deeply so. From where I sit as a parent who has been privileged to have the time to advocate on behalf of my daughter, the education process has been frustrating and draining, and I don't begrudge a minute of it. It's allowed me to come here today, and many other days, to offer a perspective you all don't get to hear very often.

Given that my daughter was not taught how to read until she reached high school – she had memorized enough words to be operating around a third grade level – I would say that four things come immediately to mind. 1. Funding is absolutely necessary so district administrators are not in the position of having to choose between abiding by IEPs or not. Or even classify a student or not. To put it as plainly as possible, “not” means violating federal law. 2. Perhaps the most important work a teacher (and administrator) can do is to have really good, directly related to their expertise, professional development so they can continue to grow in their craft. If my daughter had had teachers who were trained to recognize and correct lack of reading skills, her educational trajectory would have been very different. 3. District administrators must be flexible and responsive to the needs of their students as they move through the school system – what works well one year may not a couple of years later. We need administrators who understand this and have the ability to lead their district accordingly. 4. When all else fails, we must have an OSEP that is responsive to the needs of students and their parents. Lack of enforcement has contributed to districts providing as little as possible to our most at risk students.

As always, thank you for your time.

With respect,
Julie Borst



The New Jersey Coalition for Special Education Funding Reform

Goals and Recommendations: 2017

About the Coalition: Our coalition formed in 1996, and comprises 13 statewide organizations. Collectively, we represent tens of thousands of parents and advocates for students with disabilities. We seek a special education funding system that is adequate, efficient, equitable, predictable, flexible, transparent, placement-neutral, and accountable for spending and student outcomes.

Our members include:

- Advocates for Children of New Jersey (ACNJ)
- Alliance for the Betterment of Citizens with Disabilities
- Arc of New Jersey
- ASAH
- Disability Rights New Jersey
- The Education Law Center
- Learning Ally (formerly Recording for the Blind and Dyslexic)
- New Jersey Association of School Psychologists
- New Jersey Learning Disabilities Association
- New Jersey Speech-Language Hearing Association
- New Jersey Special Education Practitioners
- Special Education Leadership Council
- Statewide Parent Advocacy Network (SPAN)

Area 1: Data-based Policy Decisions and Accountability

1. First and foremost, the Coalition strongly urges New Jersey to conduct a **scientifically-validated longitudinal outcomes study** to examine the lives of adults who, as students, received special education services in New Jersey. We invest millions of dollars in educating students with disabilities, but objective data on these students in adult life is absent. We need to identify variables that affect positive outcomes in order to make informed decisions about education policy and funding. We note that the U.S. Department of Education's State Performance Plan, mandated by the Individuals with Disabilities Education Act, requires states to measure the outcomes of special education for youth with disabilities.

Area 2: State Funding for Special Education

2. The New Jersey Department of Education (NJDOE) should establish a **single, consistent accounting methodology for determining the actual cost of special education, and for setting tuition to be used for all programs – public and private**. New Jersey lacks data on the actual excess costs of special education, data that is needed to make informed decisions about the funding of special education services. Data available from NJDOE show a highly irregular set of public school tuition rates for self-contained special education programs – no cost data whatsoever are available from NJDOE on the full excess costs of inclusive programs and services.

The Coalition strongly urges the State to **commission an independent study to determine the full actual excess costs of providing special education services on a statewide and regional basis,**

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using the A41, A42 accounting option established by the NJDOE. Currently, most districts in New Jersey use a ratio method for assigning certain costs. This allows costs to be assigned to classrooms that do not have students in them, resulting in certified public school tuition rates for special education that are inaccurate and, in some cases, meaningless. Moreover, public school tuition rates cannot be compared to private school rates, which reflect all costs, e.g., pension, retirement benefits, debt service, and facilities. Public school tuition excludes these costs because they are funded by state tax dollars, not local tax dollars. This accounting difference allows public schools to report tuition rates that are lower than the full actual cost. *This was also a recommendation of the Special Education Review Commission (SERC), established in 2006 by the New Jersey Legislature to provide recommendations regarding special education services and funding.*

Note: Our recommendation to determine the actual excess costs of special education does not suggest that our coalition supports state funding for the full excess costs of special education.

3. New Jersey should **reinstate a weighted categorical funding system for special education, but base it on the intensity of student need.** Disability categories and program categories do not reliably capture the costs of educating a particular student. We recommend that the current tiered system be reviewed and revised to reflect the intensity of services provided, and the actual cost of those services. In addition, the Coalition urges NJDOE to make the weighting process more transparent. *This was also a recommendation of the Special Education Review Commission (SERC),*
4. New Jersey should **provide additional funds to districts serving students with highly specialized, intensive special education needs through an “extraordinary services” special education aid supplement.** This aid should be generated based on the services in a student’s IEP – not the cost of the placement – and the aid should be transportable across placements, so that districts working to return students who are in self-contained settings and who receive intensive services do not risk losing state aid. We urge the Legislature to fully fund this supplemental aid so that any district educating a student with unusually intensive service needs can receive an adequate level of additional state funding. *This was also a recommendation of the Special Education Review Commission (SERC),*

Further, the NJDOE should **revise its practice of excluding certain costs of educating students in inclusive settings and in-district programs from the calculation of the total cost of educating that student, when those same costs are included in out-of-district tuition rates.** This means that, in effect, students who are educated in-district must cost more to generate extraordinary aid than students educated out-of-district, which violates the placement-neutral funding requirements of federal law.

5. The level of **state special education aid provided to a district should be based on a student’s needs, not a district’s ability to pay.** We oppose any effort to link special education aid to local district wealth. Such a move would have a negative impact on students with disabilities and would discourage districts with resources from developing quality special education programs and services. It would create a fiscal incentive for poorer districts to over-identify students, and, conversely, would discourage wealthy districts from identifying students who may need special education. It would have a particularly negative impact on students who move from one district to another. *This was also a recommendation of the Special Education Review Commission (SERC),*

Area 3: Improved Coordination of Services and Improved Public/Private Collaboration

6. New Jersey should establish a **statewide database to track the type and capacity of all self-contained programs –public and private –** that serve students with disabilities. *This was also a recommendation of the Special Education Review Commission (SERC),*

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7. NJDOE should **facilitate shared special education services within the county or region**. The shared services should include but not be limited to direct services, e.g., specialized evaluations and related services such as occupational therapy, physical therapy, speech therapy, nursing services, counseling, personnel development, and technical assistance. We also support efforts to help districts develop high quality in-district inclusive programs and services, training regarding inclusive education, positive behavior supports, transition to adult life, and parent/professional collaboration. **We urge that separate programs with specialized expertise – public and private – be considered as a resource for local districts seeking training, consultation, and program development services to provide services to students with disabilities in-district and in inclusive settings.** *This was also a recommendation of the Special Education Review Commission (SERC), and is consistent with recommendation #20 of the Joint Legislative Committee on School Finance (JCSF).*
8. New Jersey should **increase opportunities for schools, both public and private, to share equipment and assistive technology (AT)**. We support coordinated efforts to disseminate information about existing loan and re-circulation of equipment and AT centers, to provide training and technical assistance regarding AT, and to establish an AT lending library. *This is consistent with recommendations supported by the SERC and with recommendation #20 of the JCSF.*
9. New Jersey should **promote increased collaboration between local school districts and separate, self-contained programs – public and private – that solely serve students with disabilities**, so that these programs can be located in local public school buildings and integrated into the general education program. *This recommendation is supported by the SERC and is consistent with recommendation #20 of the JCSF.*

Area 4: Transportation

10. New Jersey should **enhance coordination and regionalization of pupil transportation services to increase efficiency and reduce costs**. In addition, NJDOE should examine the benefits of establishing a state academic calendar. *Both of these recommendations were supported by the SERC.*

Area 5: Pre-referral Intervention Services

11. New Jersey should **facilitate effective general education pre-referral intervention services in an effort to reduce inappropriate classification for special education services**. We urge, however, that protections be put in place to ensure that the appropriate referral of children with disabilities to special education is not delayed. *This was strongly recommended by the SERC and is consistent with recommendation #18 of the JCSF.*
12. In addition to the weighted categorical aid system, New Jersey should **establish a dedicated flat grant to districts based on enrollment, in order to enhance the general education program and provide appropriate pre-referral intervention services**. *This was endorsed by the SERC and is consistent with recommendation #18 of the JCSF.*

Area 6: Facilities

13. The Legislature should amend the “Educational Facilities Construction and Financing Act” and its implementing regulations to **require local districts to plan for and provide suitable facilities for students with disabilities**. We caution, however, that legislative or policy efforts to advance this goal not be limited to ensuring adequate special education classroom space, and/or the development of a special education “wing” in a building. Rather, architectural elements of Universal Design must be

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applied to all new school construction so that students with a full range of physical, behavioral, and learning disabilities may be served, to the extent appropriate, in the general education classroom. New school facilities must also include space dedicated for training, program consultation, and supervision to ensure the high quality of special education services. *This is supported by recommendation #19 of the JCSF.*

14. NJDOE should be **required to verify the need for all self-contained special education programs, public or private; the new construction of separate buildings solely for students with disabilities; and the retrofitting of buildings for such purposes.**

Area 7: Budget Controls

15. We urge that **special education costs be placed OUTSIDE any proposed revenue cap.** To do otherwise causes animosity between general education and special education services at the local level, and places unnecessary “blame” on students with disabilities and their families for the cost of special education. *This was a key recommendation of the SERC.*

Area 8: Early Childhood

16. We support efforts to require **full-day kindergarten for all students, and to provide state aid for high quality preschool programs for all students.** Public programs will allow more kindergartners and preschoolers with disabilities the opportunity for inclusive placements. *This was also a recommendation of the SERC and is consistent with recommendation #28 of the JCSF.*

Since 2009, this position paper has been endorsed by:

Apraxia Network of Bergen County
Community Health Law Project
Essex County Bar Association
Excellent Education for Everyone (E3)
Family Voices/New Jersey
New Jersey Down Syndrome, Government Action Committee
New Jersey Council on Developmental Disabilities
New Jersey TASH
PASST– Parents Advocating for Special Services in Education
Rutgers University School of Law, Special Education Law Clinic
Seton Hall School of Law, Center for Social Justice
Spina Bifida Association – Tri State Region

Respectfully Submitted.



Brenda Considine, Coordinator

COMMENTS OF THE STATEWIDE PARENT ADVOCACY NETWORK

The Statewide Parent Advocacy Network (SPAN) appreciates this opportunity to provide comments regarding New Jersey's education system and recommendations for its improvement.

The Statewide Parent Advocacy Network (SPAN) is New Jersey's federally-designated Parent Training and Information Center, funded by the US Department of Education to provide support to families of infants, toddlers, children, youth and young adults with disabilities or at risk of inappropriate identification in the early intervention, special education, and transition to adult life systems, and Family to Family Health Information Center, funded by the US Department of Health and Human Services Maternal and Child Health Bureau to provide support to families of infants, toddlers, children, youth and young adults with special healthcare needs on issues of access to health insurance, healthcare, community services, and transition to adult life. Our Military Family Support 360 project, located on the joint base, provides PTI and F2F-related services to New Jersey's military families on and off the base. SPAN also houses the Family Voices NJ State Affiliate Organization, Federation of Families for Children's Mental Health Chapter, and Parent to Parent USA affiliate. SPAN is also the home to three national projects, the National Center for Parent Information and Resources (www.parentcenterhub.org), RAISE National Transition Parent TA Center (www.raisecenter.org), and National Center for Family Professional Partnerships (in collaboration with National Family Voices). SPAN serves as the Regional Technical Assistance Center for Region 1, providing information and support to the network of federally-funded parent centers in the NE US, and the REACH for Transition Regional Parent TA Center. In addition to these federally-funded projects and designations, SPAN operates over 15 state- and foundation-funded projects aimed at building the capacity of families and professionals to partner to improve outcomes for New Jersey's most at-risk children and youth, including children with disabilities and special healthcare needs.

Last year, SPAN reached over 150,000 families, youth, and professionals with information about our services and how to access them; disseminated over 500,000 copies of resource materials; and provided individualized assistance, training, and leadership development to over 30,000 families, youth, and professionals. Our Military Family Support 360 staff assisted over 1,000 military-connected families throughout the state. Over 90% of surveyed respondents indicated that our information, training and individualized assistance was of high quality, relevant, and useful. Common issues included ineffective transition from early intervention to preschool, including long delays in the process caused by inadequate evaluation team staffing over the summer and insufficient bilingual evaluation and Child Study Team staff; exclusion from typical child care centers; bullying, harassment, and intimidation, often on the basis of disability, race/ethnicity, immigrant status, or sexual orientation; inappropriate use of discipline and failure to use positive behavioral supports and interventions; use of aversives, restraints, and seclusion; poor quality IEPs that do not meet state or federal standards; failure to provide appropriate accommodations and modifications in the classroom and on assessments; implementation of the Every Student Succeeds Act (ESSA); lack of quality transition services; access to healthcare and affordable health coverage; and barriers to effective family-professional partnerships in education, health, mental health, and other services.

Many of our projects provide professional development and support to New Jersey's

professionals who work with children and families. For example, we provide a half-day training to every new social worker at the NJ Department of Children and Families. Our NJ Inclusive Child Care project provides on-site training and assistance to child care providers to help them include young children with special needs. About 1/3 of the participants in our workshops and ¼ the callers to our warmline are professionals.

SPAN also participates on virtually every state-level advisory committee or Task Force related to children and families, including the NJ Special Education Advisory Council, State Systemic Improvement Plan/State Performance Plan Stakeholders, and ESSA Advisory Council (education), Early Intervention State Performance Plan/SSIP Stakeholders and Family Support Committee of the NJ State Interagency Coordinating Council (EI); NJ Task Force on Child Abuse and Neglect Prevention Committee (child welfare); and NJ Community of Care Consortium for Children with Special Healthcare Needs, Early Hearing Detection and Intervention Advisory Council, and Newborn Screening Advisory Council (health); NJ Council on Developmental Disabilities, Division of Developmental Disabilities Family Advisory Council, PerformCare Family Advisory Council, Boggs Center University Center of Excellence on Developmental Disabilities Consumer Advisory Council, and Disability Rights NJ/Protection and Advocacy Advisory Council (developmental disabilities); and NJ GAINED, etc.

Our comments today are based on this broad and deep experience and expertise.

Critical Education (including Special Education) Issues

Transition from Early Intervention to Preschool: A significant barrier faced by many families occurs when their toddler is transitioning from early intervention to preschool special education services, a transition that is supposed to ensure that the child is receiving special education services by age 3. Unfortunately, SPAN continues to hear from many parents about delays in this process, caused in large part by two main problems: a failure of school districts to staff their evaluation and Child Study Team (CST) IEP teams during the summer, and insufficient bilingual evaluation and CST staff. As a result, far too many children with disabilities who are transitioning in the late spring and summer months are not even evaluated until the fall and thus do not begin receiving their special education services until late fall or winter. This occurs even though the NJ Special Education Code requires districts to conduct evaluations and IEP team meetings over the summer, and to ensure sufficient staff or contractors to conduct evaluations in languages other than English.

Inclusion: The research on child outcomes is overwhelming: inclusion with non-disabled peers, especially in the early childhood years, leads to better academic, social, and functional skill development, yet in our state we continue to segregate students – even preschoolers - with disabilities. Factors that contribute to preschool segregation include the fact that child care providers are not always aware of, or committed to implementing, equal access laws such as the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act; and the unwillingness of districts to provide consultant, related, and other services in those settings (including Head Starts). In fact, we frequently hear from Head Start Centers that they are unable to meet their required disability levels because districts refuse to provide services on site. The NJ Department of Education special education statistics from 2015 (the most recent available data) indicate that less than 45% of preschoolers receive the majority of their services

in a typical early childhood program.

For school age students in NJ, slightly more than half (52.25%) spend 80% or more of the school day in general education – which means that almost half do not! For some racial groups, the extent of inclusion is significantly lower. For example, only 46% of African American students and 45.5% of Latino students with disabilities spend 80% or more of the school day in general education. The percent by disability varies widely. For example, only 1/3 of students with autism, 24% of students with multiple disabilities, and 10% of students with intellectual disabilities, are included. Factors that contribute to school-age segregation include low expectations for students with disabilities as well as lack of capacity at the school and district level to include students with more significant disabilities.

Bullying, Harassment, and Intimidation: Calls from parents regarding the bullying, harassment, and/or intimidation of their children is among the top three reasons parents contact SPAN. The recipients of this bullying, harassment, and intimidation behavior are generally children perceived as powerless, different, or weaker, including students with disabilities, of minority races, ethnicities and languages, immigrant students, and LGBTQ students, among others. Far too often, parents inform us that school and district leadership refuse to follow up on their complaints, discourage them from taking further action, and belittle their concerns about the impact of the bullying and requests for preventive steps. We also hear from parents when their children who had been mercilessly bullied or harassed for prolonged periods of time and finally fight back and then are disciplined for fighting, etc. We know that nationally:

- Children with disabilities are 2-3 times more likely to be bullied than their non-disabled peers; specific research on disproportionate bullying of children with ADHD, autism, epilepsy, hemiplegia, learning disabilities, stuttering
- About 60% of children with disabilities are bullied or harassed
- While reported use of hate words decreased overall from 2001-2013, it increased for use of hate words aimed at race, ethnicity, sexual orientation, religion, & disability (Data Point, from School Crime Supplement to National Crime Victimization Survey)
- Children with disabilities often have many characteristics that are more likely to result in being bullied
 - Are perceived as different – who look, act, move, or speak differently than others
 - Are perceived as weak or unable to defend themselves – who display vulnerable behavior
 - Are depressed, anxious, or have low self-esteem
 - Are less assertive – who may seem weak or easily dominated
 - Are less popular and have fewer friends – who are socially isolated
 - Are seen as having lesser status
 - Are seen as annoying or provoking, or antagonize others for attention

We also know that bullying can negatively impact a child's access to education and lead to:

- School avoidance and higher rates of absenteeism
- Decrease in grades
- Inability to concentrate
- Loss of interest in academic achievement
- Increase in dropout/school non-completion rates

- Increase in social anxiousness & reduced self-esteem

As a member of the NJ Coalition for Bullying Awareness and Prevention, we have endorsed the recommendations of the NJ Anti-Bullying Task Force. Also, the need to prevent and appropriately address bullying, harassment, and intimidation is a key reason that SPAN opposes the use of chronic absenteeism as the School Quality/Student Success indicator in the NJ ESSA Plan and instead supports the use of school climate as an indicator.

Discipline, Positive Behavioral Supports, and Use of Aversives/Restraint/Seclusion:
Suspensions and expulsions, especially out-of-school suspensions and expulsions, have long-term negative effects on students. Just one suspension makes a child three times more likely to be involved with juvenile justice the following year, and more than twice as likely to drop out of school. In addition, there are significant disparities in how discipline is imposed on students. African-American students are excluded from school at a rate 3 times that of white students. 25% of black boys and 20% of black girls with disabilities are suspended each year. Children with disabilities are twice as likely to be suspended as students without disabilities; one-third of all K-12 children with emotional disabilities, such as anxiety or obsessive compulsive disorder, are suspended at least once in the school year. Very troubling, given the reality of child development, preschool children are suspended at a far higher rate than school-age students! And the racial disparities exist even at this early age: Black children represent 18% of preschool enrollment, but 48% of preschool children receiving more than one out-of-school suspension; in comparison, white students represent 43% of preschool enrollment but 26% of preschool children receiving more than one out of school suspension. Boys represent 79% of preschool children suspended once and 82% of preschool children suspended multiple times, although boys represent 54% of preschool enrollment. While NJ reported male suspension rates less than the national average for every racial/ethnic group, and a smaller gap between black students and their white peers (one of only 3 states to do so), there are still troubling disparities between black students and their white peers in NJ suspensions. As a member of Youth Justice New Jersey (formerly the NJ Juvenile Justice Reform Coalition), SPAN is working to disrupt the school-to-prison pipeline.

Disturbingly, from the parent calls we receive, far too often basic minimal procedural safeguards, for both general and special education students, are ignored when suspending or expelling students.

Lack of schoolwide and individualized positive behavior supports: The NJ Department of Education has worked to integrate schoolwide positive behavioral interventions and supports into NJ schools via the Positive Behavior Supports in Schools initiative. PBSIS uses a multi-tiered, proactive educational approach to behavior. Through collaboration with the Boggs Center, the PBSIS state team provides training and technical assistance in universal, schoolwide interventions, secondary interventions for students with repeated challenging behaviors, and tertiary interventions for students with more intensive behavioral needs. The training and assistance is provided to cohort schools over a multi-year period. While this is a promising initiative, to date, the reach is small compared to the overwhelming number of schools and districts in our state. This is unfortunate, because the key to reducing the use of punitive discipline and aversives, restraints, and seclusion is to ensure that individuals who exhibit challenging behaviors have access to comprehensive and individualized positive behavior

support. More than two decades of peer-reviewed studies have provided strong evidence of positive alternatives for addressing even the most serious behavior challenges, such as self-injury, aggression, and property damage. The success of Positive Behavior Support (PBS) has been documented across settings, including schools, family homes, and typical places in the community. Because PBS is not intrusive or inappropriate for public places, PBS supports and encourages children to participate more fully in normal everyday activities and community life. It is the “least restrictive intervention” designed for the “least restrictive setting.”

Individualized PBS, which is called for under the IDEA and is based upon a completed Functional Behavioral Assessment, is an evidence-based technology and process for developing effective, individualized, non-aversive interventions for children whose behavior challenges us. PBS draws information from psychology, medical research, and neuroscience to understand how learning and long-term behavior change occur.

The goal of PBS is not merely to suppress or eliminate unwanted responses but to understand and respond thoughtfully to their cause and/or purpose. The child can then be assisted to substitute more appropriate and effective behaviors, including better ways to make his or her feelings, needs, and choices known. The Positive Behavior Support approach also involves evaluating a child’s physical environment and changing those things or events that are overwhelming or stressful (e.g., loud noises, crowded situations, unstructured time, inappropriate instructional strategies, lack of adaptations in curriculum). Last but not least, it involves a commitment to changing attitudes and behaviors on the part of adults with whom the child interacts. The key elements of positive behavior support include:

- Understanding through Functional Behavioral Assessment and hypothesis-based interventions that are selectively determined based on an individual’s needs, characteristics, and preferences;
- Prevention and early intervention;
- Education and capacity building;
- Utilization of long-term, comprehensive approaches;
- Involvement and ownership of key stakeholders; and
- Commitment to outcomes that are meaningful for that individual.

Focusing solely on the reduction of problem behaviors through the use of positive or negative consequences, and/or simply reinforcing appropriate behaviors by itself is not PBS. Positive Behavior Intervention and Support involves teaching new skills that replace challenging behavior over time, assisting the individual to change his or her interactions (physical and social), and must be based on the conduct of a Functional Behavioral Assessment. Disappointingly, our review of IEPs for students with disabilities who display challenging behaviors far too often reveals that functional behavior assessments have not been conducted, either as part of initial evaluations or when challenging behaviors have been displayed, and that individualized positive behavior support plans are not included in those IEPs, or, if included, are not routinely implemented.

Use of Aversives/Restraint/Seclusion: It is discouraging that effective strategies, such as schoolwide and individualized positive behavior supports, are ignored while discipline, including the use of aversives, restraint and seclusion, are utilized instead. In the United States, students with disabilities (served by IDEA) represent 12% of the student population, but 58% of those

placed in seclusion or involuntary confinement, and 75% of those physically restrained at school to immobilize them or reduce their ability to move freely. Black students represent 19% of students with disabilities served by IDEA, but 36% of students with disabilities who are restrained at school through the use of a mechanical device or equipment designed to restrict their freedom of movement. These practices are dangerous, physically and emotionally; can have long-term negative impacts on children after just one incident; and make schools less safe. These practices are traumatizing to the children on whom they are used.

Recent research shows that most children restrained are under 10 years old, and that aggressive behavior of the student is rare. In fact, the most likely cause for staff to restrain or seclude students is “failure to comply.” The most vulnerable children are being subjected to dangerous practices for reasons that are not justifiable.

As a member of the Alliance to Prevent Restraint, Aversive Interventions, and Seclusion (APRAIS), SPAN is committed to ending the use of aversive interventions, restraint and seclusion as a response to or attempt to control the behavior of children and youth, including seeking the prohibition of incorporation of these practices into the education, habilitation, or other service delivery plans for children and youth with disabilities.

Trauma-Informed Services & Restorative Justice Practices: SPAN is keenly aware that many children come to school having experienced many traumas, and that they can also be exposed to additional trauma while in school from bullying, harassment, and intimidation; school violence; and the use of aversives, restraint, and seclusion. See information on ACEs (Adverse Childhood Experience’s) Study at <https://www.cdc.gov/violenceprevention/acestudy/>

It is critical that school staff learn how to provide trauma-informed services and that school policies are consistent with the principles of trauma-informed care. Restorative practices, or restorative justice, can also be used to build a sense of school community and resolve conflict by repairing harm and restoring positive relationships. You can find out more about this important topic at

http://www.dignityinschools.org/sites/default/files/Fact_Sheet_RestorativeJustice_PBIS.pdf.

NJ ESSA State Plan: SPAN has been engaged in the development of this plan in a number of ways. Debra Jennings, SPAN Executive Co-Director, and Peg Kinsell, SPAN Institutional Policy Director participated in NJDOE’s focus group meetings on accountability providing input on the state goals and indicators. SPAN hosted regional roundtables where parents were able to learn about key elements of the state plan and provide their perspectives and feedback. SPAN also developed an ESSA guide for stakeholders that was distributed not only in NJ but has been disseminated nationally. Finally, throughout the plan development processes, we have posted information about the planning and gathered parent feedback through our social media platforms, our Facebook organization page (4,000+ Likes) and groups (3,000+ members). There are many components of the state plan which we strongly endorse. New Jersey has done a good job of addressing the core elements required by the ESSA statute and reflecting the specific context and interests of New Jersey’s education stakeholders. The plan is one that sets forth high expectations for all students and includes some key elements in its accountability design that will strongly encourage schools and districts to make the needed changes and improvements to support administrators, educators and support personnel in achieving them. We support:

- New Jersey’s selection of the goal of 80% proficiency on state assessments
- The state’s goal of a 95% graduation rate

- The use of both the 4- year and extended year graduation rates
- Equal weighting to academic achievement and academic progress (for elementary/middle schools) and academic achievement and graduation for high schools
- Including students for two years after they are no longer eligible for services or their parents have revoked consent for special education services in the special education cohort
- “N” size of 10 for reporting purposes
- Holding schools accountable for their out-of-district placements.

However, we have concerns about and oppose other areas including:

- Continued use of PARCC tests for statewide assessments. Their use as a high-stakes test for students to meet graduation requirements is not evidence-based and most negatively impacts students who are economically disadvantaged and students of color. Further, while parents have been told that the PARCC data would be used to improve instruction and interventions for students, to date this information has not been provided to parents or staff in a timely manner or in formats that would afford such use.
- Proposed use of student growth percentiles (SPGs) to measure academic progress, a questionable practice; we support instead a growth to standard measure.
- Proposed use of chronic absenteeism as an indicator. We support instead the use of school climate, which has been linked to several important outcomes including increased student self-esteem and self-concept, decreased absenteeism, enhanced risk prevention, reduced behavioral problems and disciplinary actions (in-school detention and out-of-school suspension), and increased school completion. School climate has been recognized as a critical component of school improvement efforts because of its effects on students’ outcomes. Establishing and maintaining a positive school climate benefits all students, including students with disabilities, English language learners, children and youth from economically disadvantaged families, and students from racially/culturally diverse groups.
- The state proposes a process of averaging all subgroup scores, which is unlikely to foster improvement for the lowest performing subgroups. SPAN instead recommends that the score place more weight on the subgroups with the largest gaps.
- The state proposes to use an “n” size of 20 for accountability. We continue to support the “n” size of 10 to (1) ensure that a greater numbers of schools are held accountable for the academic progress of students with disabilities, and (2) discourage LEA practice of limiting school placement options for students with disabilities and English language learners so that they control the number of schools that are accountable for these students.

SPAN commends NJ on moving forward in providing guidance and support for schools to implement the NJ Tiered Systems of Support Framework, which includes both academic and behavioral components. This framework can help schools to more intentionally identify students challenges before they fail and be better organized to respond with the interventions and supports that will help students overcome these challenges. However, NJTSS and PBIS are just frameworks. Educators, support staff and administrators need to have the materials and resources to differentiate instruction, modify and supplement curriculum and conduct authentic and useful curriculum-based assessments. These are core elements of universal design for learning (UDL) and we recommend that the plan include explicit language about the need for and implementation of professional development and evaluation related to UDL.

SPAN’s detailed comments on the state’s proposed ESSA Plan are attached. Please note that

SPAN strongly opposes the use of off-grade testing because it contributes to low expectations for students with disabilities.

Funding Issues: As indicated in the attached testimony, SPAN has serious concerns about the proposed education “fairness” funding formula, which we have expressed individually and as a member of the NJ Special Education Funding Coalition.

We remain opposed to the overall student population census based formula, and would support instead funding based on the actual number of students with disabilities. We continue to be concerned about the lack of detailed information about the real day to day costs of special education for districts. The loss of tiered funding and no targeted aid for special education leads to misinformation on costs to districts and pits general and special education parents against each other in the face of scarce resources. We also want to recognize that it is difficult to be wholly critical of a funding system (SFRA) that has never been fully funded and that falls woefully below its adequacy measures still today.

Our concerns about the proposed “fairness formula” include a recognition that this approach would have devastating effects on school district budgets across the state. In particular, the formula would likely have devastating impacts on two populations of great concern to SPAN: preschool aid and weighted supports for students at risk. Education funding must explicitly support preschool students and students at risk for a variety of reasons so that they receive the high-quality education that they deserve, and to ensure that students are not inappropriately classified. We can support the proposed State School Aid Fairness Funding Commission, but only if its membership includes representatives of families of students who face the greatest challenges, especially those most at risk due to their socioeconomic status, disability, special healthcare need, language or immigrant status or involvement in foster care, child welfare, or juvenile justice systems. As a group committed to parent leadership and community engagement we also would like to make sure there is a commitment for transparency and an avenue for public input as this commission moves forward with its work.

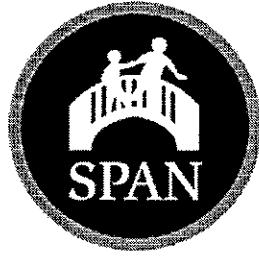
We believe the agenda for the group is robust but is missing a critical piece, special education funding. That has been a concern for all districts whether urban, suburban, or rural since SFRA drastically changed the way that funding was distributed. It must be part of the discussion.

Equity issues: Across all areas, the barriers faced by immigrant and limited English proficient children and their families, families of color, low-income families, families with literacy challenges, etc. are exponentially greater. There is significant disproportionality in identification, classification, placement, discipline – including use of aversives, restraints, and seclusion - graduation and drop-out rates in education. The quality of IEPs and transition plans are generally low, but for low income students and students of color and LEP families, the quality is far too often exceedingly poor. Schools frequently do not provide language access to LEP parents unless they are threatened. The use of NJ’s child welfare system to intimidate low income families, families of color, and immigrant and LEP families, has long-lasting negative effects. Ensuring equitable services and reducing disparities in outcomes must be a high priority for our education system and the legislators who oversee it.

Thank you again for this opportunity to provide comments on the areas we have identified as

among the highest priority education issues to address. We look forward to working with you to help improve our state's educational system and outcomes for all our state's students.

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*Statewide Parent
Advocacy Network*

The Statewide Parent Advocacy Network (SPAN) is the largest statewide, cross-issue, parent-led advocacy organization for families of children and youth, with and without special needs, age birth to 26. Our mission is to empower and support families and inform and involve professionals and others interested in the healthy development and education of children and youth to maximize their education and healthy development. SPAN houses the federally funded Parent Training Information Center for New Jersey. In addition, we direct the regional (NEPACT) and national (CPIR) Parent Technical Assistance Centers funded by US Department of Education Office of Special Education Programs.

Thank you for the opportunity to discuss education funding in New Jersey. SPAN, along with many of the advocates in the room today, spent our winter holiday 2008 in this Statehouse, meeting, testifying and then watching as the legislature passed the SFRA. It was a hectic time and one we came away from exhausted by the whirlwind nature of those days and by the speed at which the legislation passed. For such an extensive bill that would have so much impact for the students, families and communities of NJ, it seemed to be a less than deliberative process. That being said, no matter the direction in which this legislature intends to move, whether it is SFRA remaining as is, or some new iteration, it is critical that there be robust, accessible public hearings on dates, at times, and in locations that make it easy for all – parents, educators, and the tax-paying public - to contribute. It will be refreshing for the public to be a partner and not merely a bystander in the process.

SPAN had concerns with the SFRA from the beginning. We remain opposed to the overall student population census based formula, and would support instead funding based on the actual number of students with disabilities. We continue to be concerned about the lack of detailed information about the real day to day costs of special education for districts. The loss of tiered funding and no targeted aid for special education leads to misinformation on costs to districts and pits general and special education parents against each other in the face of scarce resources. We are a member of the Special Education Funding Coalition, who I am

sure would be happy to lend their expertise to your future work on funding issues for students.

We also want to recognize that it is difficult to be wholly critical of a funding system (SFRA) that has never been fully funded and that falls woefully below its adequacy measures still today.

We have very serious concerns about the proposed "fairness formula". The numbers that ELC has run show that this approach would have devastating effects on school district budgets across the state. In particular, the formula would likely have devastating impacts on two populations of great concern to SPAN: preschool aid and weighted supports for students at risk. Education funding must explicitly support preschool students and students at risk for a variety of reasons so that they receive the high quality education that they deserve, and to ensure that students are not inappropriately classified.

With regard to the proposed State School Aid Fairness Funding Commission, we can support the commission but believe its membership should include representatives of families of students who face the greatest challenges, especially those most at risk due to their socioeconomic status, disability, special healthcare need, language or immigrant status or involvement in foster care, child welfare, or juvenile justice systems. As a group committed to parent leadership and community engagement we also would like to make sure there is a commitment for transparency and an avenue for public input as this commission moves forward with its work.

We believe the agenda for the group is robust but is missing a critical piece, special education funding. That has been a concern for all districts whether urban, suburban, or rural since SFRA drastically changed the way that funding was distributed. We cannot see doing all of this without that being part of the discussion. I have attached a few pages from the Legislative Task Force Report on Special Education and its funding recommendations.

In closing, thank you for this opportunity to provide our comments regarding education funding in New Jersey, and we look forward to being a partner in the solution of education funding for our state for both the short and long run.

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*Statewide Parent
Advocacy Network*

The Statewide Parent Advocacy Network (SPAN) appreciates this opportunity to provide comments on New Jersey's plan for implementation of the Every Student Succeeds Act. SPAN is a parent-led organization that is focused on empowering parents and families as advocates for their children in all of the systems that serve children and families in New Jersey. This includes accessing their rights and appropriate and quality services in education, health care, behavioral health, child welfare, juvenile justice and childcare. SPAN's commitment is to families with the greatest needs due to disability, physical or behavioral challenges, race, language, immigrant status, gender identity and/or involvement in multiple systems.

SPAN has been engaged in the development of this plan in a number of ways. Debra Jennings, SPAN Executive Co-Director, and Peg Kinsell, SPAN Institutional Policy Director participated in NJDOE's focus group meetings on accountability providing input on the state goals and indicators. SPAN hosted regional roundtables where parents were able to learn about key elements of the state plan and provide their perspectives and feedback. SPAN also developed an ESSA guide for stakeholders that was distributed not only in NJ but has been disseminated nationally. Finally throughout the plan development processes, we have posted information about the planning and gathered parent feedback through our social media platforms, our Facebook organization page (4,000+ Likes) and groups (3,000+ members).

Our comments below are based on our analysis of the plan and the feedback that we have received from parents and advocates.

The Plan New Jersey has done a good job of addressing the core elements required by the ESSA statute and reflecting the specific context and interests of New Jersey's education stakeholders. The plan is one that sets forth high expectations for all students and includes some key elements in its accountability design that will strongly encourage schools and districts to make the needed changes and improvements to support administrators, educators and support personnel in achieving them.

Long-term Goals:

SPAN strongly supports New Jersey's selection of the goal of 80% proficiency on state assessments. This is an aggressive goal for achievement for all students, including students with disabilities and while we support the goal, we would like for the plan to explicitly outline the state's commitment to maintain this goal. On Page 31, the plan notes that:

"NJDOE is committed to supporting schools and LEAs to achieve New Jersey's ambitious, but achievable, long-term goals proposed in Section 1. Given the 13-year timeframe for goal attainment, NJDOE will continue to analyze actual performance, demographic shifts, changes to federal law and regulations, and the impact of new or updated

assessment instruments on performance to determine whether it needs to adjust the state's long-term goals."

This language is highly problematic. We support NJDOE making a strong commitment to the goals set out and that the plan more specifically outline how schools that are not identified under the accountability system for support will also be assisted in achieving and maintaining this level of performance. No excuses.

SPAN also supports the state's goal of a 95% graduation rate. NJ's Adjusted Cohort Graduation Rate has increased 5% in 5 years. To get to 95% is quite a task and we would like for the plan to better reflect the policies, programs and practices that the state will implement in order for this goal to be achieved. As stated above, we again ask that the state clearly outline its commitment to maintain this goal. It should also be noted that in its State Systemic Improvement Plan (SSIP) submitted to the U.S. Department of Education Office of Special Education Programs, the state has selected improving graduation for its results indicator. This plan should outline how the goals set in the SSIP are (or are not) aligned with the ESSA State Plan goals and also the graduation requirements.

ESSA School Accountability System

Assessments: New Jersey has indicated that it will continue to use *PARRC tests* for its statewide assessments. This component of the state's accountability system was not discussed by the focus groups on accountability. SPAN continues to have concerns with the adoption of use of the PARCC assessments. These assessments were adopted with minimal opportunities for authentic feedback from parents and advocates and this adoption moved forward despite significant negative feedback. Further, their use as a high-stakes for students to meet graduation requirements is not evidence-based and most negatively impacts students who are economically disadvantaged and students of color. Finally, while parents have been told that the PARCC data would be used to improve instruction and interventions for students, to date this information has not been provided to parents or staff in a timely manner or in formats that would afford such use.

While there is no requirement to discuss the use of Alternate Assessment, Dynamic Learning Maps, in the ESSA plan, NJ should address the definition of students with the most significant cognitive disabilities, including obtaining feedback on such definition from stakeholders. Further, the plan should list the strategies the state will employ to not exceed the 1% cap on alternate assessments.

Academic Progress Indicator. NJDOE proposes to use student growth percentiles (SPGs) to measure academic progress. SGPs describe a student's academic progress from one year to the next compared to other students with similar prior test scores (academic peers). The use of SGPs is questionable as reported in the research brief, *Why We Should Abandon Student Growth Percentiles*, by the Center for Educational Assessment at the University of Massachusetts Amherst (https://www.umass.edu/remf/pdf/CEAResearchBrief-16-1_WhyWeShouldAbandonSGPs.pdf.) NJDOE should consider using a growth to standard measure for public reporting and as a metric

in the state's accountability system. We encourage the state to move to a growth to standard measure as quickly as possible to replace the use of SGPs.

Graduation Indicator. The state plan indicates that both the 4-year and 5-year ACGRs will be used to calculate a school's overall graduation rate. SPAN supports the use of both the 4-year and extended year rates. Our experience in working with youth with disabilities and their families is that often students are pressured to graduate in four years when the nature of their learning needs indicate that having extra time to achieve graduation would greatly benefit them developmentally and also set them up for better outcomes post-graduation. SPAN does recommend that high schools be required to report the 4-year and the extended year ACGRs separately.

School Quality or Student Success Indicator. NJDOE proposes to use Chronic Absenteeism as its measure of school quality/student success. Stakeholders who provided feedback on the development of the state plan broadly supported using school climate as a non-academic measure and that chronic absenteeism be only a portion of that measure. SPAN strongly disagrees with the proposed plan's use of chronic absenteeism as the sole measure for school quality. NJ has a relatively low rate of chronic absenteeism (as defined by and reported to the Civil Rights Data Collection) with a rate of 12%. Further, using a sole measure for this indicator subjects it to significant corruptibility. Also, SPAN is concerned about the unintended consequences of this indicator, as schools/LEAs may look to unfair and often discriminatory practices against parents, including court appearances for truancy charges and reports of educational neglect to the Division for Child Protection and Permanency, as they shift the burden to communities and families to resolve attendance issues rather than developing school-based solutions."

SPAN recommends, in concert the Rutgers Law Clinic, Education Law Center State Education Organizing Council and the Paterson Education Fund that:

"At the very least, . . . the absenteeism measure to include days of lost instruction due to discipline "as either a standalone indicator or as part of a school climate or chronic absenteeism indicator for statewide accountability because it is an area that research has shown is determined by school-level policies, practices and leadership. This proposed critical addition comes in response to reports demonstrating lost instruction time for minority students and students with disabilities, who are particularly vulnerable to experiencing exclusionary discipline. Without directly addressing the intersection between discipline and absenteeism, these populations will continue to be at greater risk of being pushed out of the classroom and ultimately dropping out of school. (<http://schottfoundation.org/report/suspended-education-massachusetts>)

Also, NJDOE should ensure that students with disabilities who experience health conditions that can impact attendance do not negatively impact a school's attendance rates.

Indicator Weighting. We support the plan's assignment of equal weighting to academic achievement and academic progress (for elementary/middle schools) and academic

achievement and graduation for high schools.

Factoring subgroups into accountability. The draft plan consistently states that “New Jersey is focused on closing the large achievement gaps for economically disadvantaged and minority students.” Yet, these groups are not the lowest performing groups of students as indicated by academic achievement and graduation data. Rather, the English learner and children with disabilities are the lowest performing groups. The draft plan proposes giving each school where subgroups meet the minimum “n” size of 20 and a subgroup score, which will be the average of all individual subgroup scores and will be weighted equally with a school’s overall score for all students to determine the final score for each indicator (with the exception of the English language progress toward proficiency indicator). However, averaging all subgroup scores is unlikely to foster improvement for the lowest performing subgroups. SPAN recommends that the score place more weight on the subgroups with the largest gaps.

Counting former special education students. SPAN supports the plan to “Beginning in 2016-2017, the special education subgroup will include students for two years after they are no longer eligible for services or their parents have revoked consent for special education and related services. Previously, students were not included after exiting school.” While the ability to do this may not be explicit in the statute or regulations, it does not seem to be precluded and we believe that this is a better way to reflect the impact of special education on student’s academic progress.

Minimum subgroup size. NJDOE plans to use an n-size of 20 for accountability and 10 for reporting. The draft plan provides data on the impact of the n-size by subgroup for achievement, progress, and graduation. Those data indicate that the vast majority of students with disabilities will be included in NJ’s accountability system. While this data indicates the numbers of students that will be included, we believe that the numbers of students who will be excluded from the accountability system should be outlined, and an analysis of the difference if the state were to use a minimum “n” size of 10, as we have recommended. We continue to support the “n” size of 10 to 1) ensure that a greater numbers of schools are held accountable for the academic progress of students with disabilities, and 2) discourage LEA practice of limiting school placement options for students with disabilities and English language learners so that they control the number of schools that are accountable for these students.

Participation Rate. The plan states that “Pursuant to 1111(c)(4)(E) of ESSA, all states are required annually to measure the achievement of at least 95 percent of all students in each student subgroup. When measuring, calculating, and reporting proficiency rates, states are required to include either a denominator equal to 95 percent of all students (and of each student subgroup as the case may be) or the number of students participating in the assessments. For schools that fail to achieve 95 percent participation, any student below the 95 percent threshold will therefore be counted as “not proficient” in the calculation of proficiency rates even though they did not take the exam.”

Beyond this “penalty” for failing to test at least 95% of students, NJDOE proposes a “secondary penalty is as follows: Failure to meet the 95 percent participation rate requirement will be

publically reported on school performance reports.” Public reporting of failure to meet this very critical element of ESSA’s accountability system is important, but inadequate. In order to ensure that students with disabilities and other subgroups are participating at the same or higher rates as all students, we recommend that there be a greater penalty for schools that do not meet the 95% participation rate AND where there are gaps between the participation rates of any subgroup and the rate for all students. These schools should be required to develop and implement a plan of how to correct the problem and these schools should not be able to achieve a satisfactory rating if this participation requirement is not met.

In our ESSA roundtables, parents expressed a number of incidences where their students were not included in state assessments and were deterred by IEP teams, teachers and administrators. These parents, while understanding that their students assessment results may not be the most positive and they may not demonstrate proficiency, they do want their students to take the test with needed accommodations and supports so that they can have a better understanding of their students strengths and needs in the context of their peers. NJ’s plan should include additional penalties when schools fail to meet the participation requirement for the same student subgroup or subgroups over consecutive years as this would be a clear indication that student participation is may be being tampered with where participation of students in certain subgroups may be deterred or discouraged.

Including special education students served in out-of-district placements. The plan states that “Special education students served in proprietary (private) schools will be counted in the sending schools’ accountability system, which will ensure placement decisions are reviewed closely at the sending school and LEA levels for optimum student academic performance.” SPAN commends NJDOE for continuing to use this approach. SPAN is deeply committed to educating students in the least restrictive environment with equitable access to the general curriculum. Holding schools accountable for their out-of-district placements will encourage them to consider the least and not the most restrictive ones that may mean insufficient instructions and interventions to support students in achieving the standards.

Supporting Students

Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At-Risk. Students receiving special education services and also students with learning or behavioral challenges who have not been identified for special education are disproportionately represented in the numbers of students who are homeless, involved in the state’s child welfare system and involved in the criminal/juvenile justice systems. The draft plan does not address how it will ensure that these students with the special education, supports and related services as required by their IEPs and that students without IEPs receive the appropriate evaluations so that eligible students can be provided with appropriate services and supports. The NJ plan should articulate how it will ensure that IDEA Child Find procedures are carried out in correctional facilities. As to supports for students, unfortunately, the framework for tiered interventions and supports (NJTSS) that is proposed as a remedy for organizing schools to get help to students, is not sufficiently advanced in New Jersey schools to really be the emergent response needed. SPAN along with other advocacy and research organizations were not included and were not provided with opportunities for meaningful

consultation with the state in this area. We would greatly appreciate the opportunity to be a part of developing a more robust, detailed and responsive plans for supporting these groups of students.

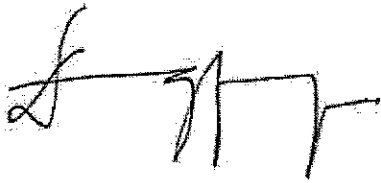
Supporting Educators

As noted in several areas above, NJ's goals and aspirations for students are aggressive, but achievable, if schools and educators receive the supports needed. SPAN commends NJ on moving forward in providing guidance and support for schools to implement the NJ Tiered Systems of Support Framework, which includes the Positive Behavior Supports in Schools. This framework can help schools to more intentionally identify students challenges before they fail and be better organized to respond with the interventions and supports that will help students overcome these challenges. However, NJTSS and PBIS are just frameworks. Educators, support staff and administrators need to have the materials and resources to differentiate instruction, modify and supplement curriculum and conduct authentic and useful curriculum-based assessments. These are core elements of universal design for learning (UDL) and we recommend that the plan include explicit language about the need for and implementation of professional development and evaluation related to UDL.

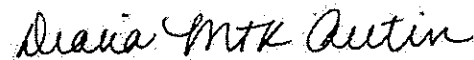
Finally, there is one small typo where we are named in the plan on page 116, *our organization's name should be noted as: "Statewide Parent Advocacy Network."*

Thank you for the opportunity to provide these comments and to be included in earlier deliberations around New Jersey's state plan. We look to continued partnerships to refine this plan and to engage parents, students and other community members inform its implementation.

Sincerely,



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Kristan Gross
Global Executive Director
Vision Impact Institute
March 22, 2017



LEGISLATION

AN ACT relating to early childhood development.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

PART I

EARLY CHILDHOOD DEVELOPMENT AUTHORITY

SECTION 1. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

- (1) The Early Childhood Development Authority is established as a public agency and political subdivision of the Commonwealth with all powers, duties, and responsibilities conferred upon it by statute and essential to perform its functions including, but not limited to, employing other persons, consultants, attorneys, and agents. The authority shall be attached to the Office of the Governor, Office of Early Childhood Development, for administrative purposes and shall establish necessary advisory councils. The authority shall have the ability to make expenditures from the early childhood development fund and shall ensure that expenditures made from the early childhood development fund are in conformance with its duties as established by the General Assembly.
- (2) The authority shall consist of the following seventeen (17) members:
- (a) The executive director of the Governor's Office of Early Childhood Development, who shall serve as chair;
- (b) The secretary of the Education, Arts, and Humanities Cabinet;
- (c) The secretary of the Cabinet for Health Services;
- (d) The secretary of the Cabinet for Families and Children;
- (e) One (1) nonvoting ex officio member from the House of Representatives who shall be appointed by and serve at the pleasure of the Speaker of the House;
- (f) One (1) nonvoting ex officio member from the Senate who shall be appointed by and serve at the pleasure of the President of the Senate;

- (g) Seven (7) private sector members knowledgeable about the health, education, and development of preschool children who shall be appointed by the Governor. At least one (1) private sector member shall be appointed from each congressional district;
- (h) Three (3) citizens at large of the Commonwealth who shall be appointed by the Governor; and
- (i) One (1) early childhood development advocate.
- (3) No later than thirty (30) days after the effective date of this Act, the governing bodies of each of the following organizations shall recommend three (3) persons, at least one (1) of whom shall be male and at least one (1) of whom shall be female, as candidates for initial appointment by the Governor as private sector members to the authority:
- (a) The Kentucky AFL-CIO;
- (b) The Kentucky Chamber of Commerce;
- (c) The Kentucky League of Cities;
- (d) The Kentucky Medical Association;
- (e) The Louisville Urban League and Lexington Urban League;
- (f) The Kentucky County Judge/Executives Association; and
- (g) The Kentucky Council on Postsecondary Education.
- (4) The Governor shall select the private sector members of the authority by selecting one (1) nominee from each list of the three (3) nominees submitted to the Governor by each organization listed under subsection (3) of this section. The Governor shall fill a vacancy occurring before the expiration of the appointed term from the appropriate list of nominees. If there are no nominees remaining on the appropriate list, the Governor shall request a list of additional nominees from the appropriate organization.
- (5) (a) The initial terms of the private sector and citizen at-large members of the

authority shall be for:

1. One (1) year for two (2) of the initial terms;
 2. Two (2) years for three (3) of the initial terms;
 3. Three (3) years for two (2) of the initial terms; and
 4. Four (4) years for four (4) of the initial appointments.
- (b) All succeeding appointments shall be for four (4) years from the expiration date of the preceding appointment.
- (c) Members shall serve until a successor has been appointed.
- (6) Private sector and citizen at-large members shall serve without compensation but shall be reimbursed for reasonable and necessary expenses.
- (7) In making appointments to the authority, the Governor shall assure broad geographical, ethnic, and gender diversity representation from the major sectors of Kentucky's early childhood development community. In filling vacancies, the Governor shall attempt to assure the continuing representation on the authority of broad constituencies of Kentucky's early childhood development community.
- (8) Upon the expiration of the term of any member, the governing body of the organization that made the original recommendation shall recommend three (3) persons, at least one (1) of whom shall be male and at least one (1) of whom shall be female, between sixty (60) and thirty (30) days before the expiration of the term of any authority member who is appointed as a result of a previous recommendation. The Governor shall, during March of the year that any organization is to recommend three (3) persons, request the organization to recommend three (3) persons for possible appointment to the authority. If there is no response, the Governor shall make the appointment from the population of the Commonwealth.
- (9) The authority shall meet at least quarterly and at other times upon call of the chair or a majority of the authority.

(10) Members of the authority shall serve on a voluntary basis, receive a fixed per diem set by the authority, and be reimbursed for their expenses in accordance with state travel expense and reimbursement administrative regulations.

SECTION 2. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

(1) The authority shall establish priorities for programs and the expenditure of funds that include, but are not limited to, the following:

(a) Implementation of public health initiatives identified by the General Assembly;

(b) Provision of preconceptional and prenatal vitamins, with priority for folic acid for the prevention of neural tube defects;

(c) Voluntary immunization for children not covered by public or private health insurance;

(d) Availability of high-quality, affordable early child-care and education options; and

(e) Increased public awareness of the importance of the early childhood years for the well-being of all Kentucky's citizens.

(2) The authority shall develop a state plan on a biennial basis that identifies early childhood development funding priorities. Every two (2) years the authority shall review its priorities and make necessary adjustments to its state plan. The state plan shall incorporate priorities included in "KIDS NOW: Kentucky Invests in Developing Success, a Report from the Governor's Early Childhood Task Force, November 1999," and recommendations identified by the community early childhood councils. The authority shall file a report on the state plan with the Governor and the Legislative Research Commission by July 15 of odd-numbered years.

(3) Programs funded by the authority shall be implemented by the appropriate

agencies within the Cabinet for Health Services, the Cabinet for Families and Children, the Education, Arts, and Humanities Cabinet, the Finance and Administration Cabinet, or other appropriate administrative agency.

(4) The authority shall assure that a public hearing is held on the expenditure of funds. Advertisement of the public hearing shall be published at least once but may be published two (2) more times, if one (1) publication occurs not less than seven (7) days nor more than twenty-one (21) days before the scheduled date of the public hearing.

(5) The authority shall promulgate administrative regulations in accordance with KRS Chapter 13A to:

(a) Coordinate and improve early childhood development services, outcomes, and policies;

(b) Establish procedures that relate to its governance;

(c) Designate service areas of the Commonwealth where the community early childhood councils may be established to identify and address the early childhood development needs of young children and their families for the communities that they serve;

(d) Establish procedures that relate to the monitoring of grants, services, and activities of the community early childhood councils and their governance;

(e) Establish procedures for accountability and measurement of the success of programs that receive funds from the authority; and

(f) Establish standards for the payment of funds to a designated service provider and grantee of a community early childhood council. These standards shall include requirements relating to:

1. The financial management of funds paid to grantees;

2. The maintenance of records; and

3. An independent audit of the use of grant funds.

- (6) The authority may disband or suspend a council, and may remove one (1) or more members for nonperformance or malfeasance. The authority may also recover funds that have been determined by the authority to have been misappropriated or misspent in relation to a grant award.
- (7) An appeal to the authority may be made by a council as to a decision made by the authority on the disbanding or suspension of a council, service provider, or grantee on a determination that funds have been misappropriated or misspent and are subject to recovery. The appeal shall be conducted in accordance with KRS Chapter 13B.
- (8) The authority, councils established by the authority, and initiatives funded by the authority with expenditures from the early childhood development fund shall expire when:
- (a) Funds are no longer designated to the Commonwealth from the master settlement agreement signed on November 22, 1998, between the participating tobacco manufacturers and the forty (40) settling states or related federal legislation; or
- (b) Funds are no longer designated to the early childhood development fund from gifts, grants, or federal funds to fund the authority, the councils established by the authority or any programs that had been funded by the authority with expenditures from the early childhood development fund.
- (9) (a) The authority shall establish a Healthy Babies Work Group, consisting of representatives from the Cabinet for Families and Children, the Cabinet for Health Services, public schools, local libraries, the Kentucky March of Dimes, family resource centers, agencies that provide benefits under the Special Supplementation Food Program for Women, Infants, and Children, the Folic Acid Awareness Campaign, physicians, secondary health education and consumer sciences teachers, the Spina Bifida Association of

Kentucky, and other persons as appropriate. Representatives shall reflect the geographic, racial, and gender diversity of the Commonwealth.

(b) The Healthy Babies Work Group shall collaborate on development and implementation of a public awareness campaign to inform the citizens of the Commonwealth about the benefits of good nutrition, folic acid, smoking cessation, and healthy lifestyle choices that lead to healthy babies, the effects of alcohol and substance abuse on fetal and early childhood development, and the need for a vision examination of children at age three

(3). The work group shall work with local health departments for the vision examination outreach program.

(10) The authority shall work with local entities, including but not limited to health departments and service providers, to establish to the extent of available funding a vision examination program for children who are not eligible for the Kentucky Children's Health Insurance Program or Medicaid, and who do not have insurance coverage for a vision examination.

(11) The authority shall develop a request for proposal process by which local early childhood councils may request any funding appropriated to the authority for use by the councils.

SECTION 3. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

The Office of Early Childhood Development in the Office of the Governor shall provide staffing and administrative support to:

(1) The Early Childhood Development Authority;

(2) The Early Childhood Business Council;

(3) The Early Childhood Professional Development Council; and

(4) The Kentucky Early Intervention System Interagency Coordinating Council.

PART 2

ADVISORY COUNCILS

2A. COMMUNITY EARLY CHILDHOOD COUNCILS

SECTION 4. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

(1) The family resource center and the child-care resource and referral agency in the service area shall form a community early childhood council and appoint members to the council for each service area designated under Section 2 of this Act. A council shall be composed of no fewer than seven (7) and no more than twenty-seven (27) members. Members may be appointed who represent local agencies and organizations, including but not limited to the organizations or agencies listed below, with no more than one (1) member from each:

- (a) Early childhood advocate;
- (b) Faith community;
- (c) School district;
- (d) Family resource center;
- (e) Military establishment;
- (f) Head Start or Early Head Start;
- (g) Child-care (profit, nonprofit, or family child-care);
- (h) Child-care resource and referral agency or child-care subsidy agent;
- (i) Child-care consumer or parent;
- (j) County cooperative extension service;
- (k) Department for public health;
- (l) University, college, or technical school;
- (m) United Way;
- (n) Kentucky Early Intervention System;
- (o) Agency administering services to children with disabilities;
- (p) Home visitation agency;

- (q) Family literacy agency;
 - (r) Civic organization;
 - (s) Public library;
 - (t) Regional training center;
 - (u) Community action agency;
 - (v) Government;
 - (w) Business community;
 - (x) Home schooling association;
 - (y) Health care professional;
 - (z) Foster care parent; or
 - (aa) Adoptive parent.
- (2) Members shall serve on a community early childhood council on a voluntary basis and receive no compensation or expense reimbursement for their service.
- (3) (a) Members shall serve for a term of two (2) years and until their successors are appointed, except that for those members initially appointed, the terms shall be as follows:
1. One-third (1/3) of the members shall be appointed for three (3) years;
 2. One-third (1/3) shall be appointed for two (2) years; and
 3. One-third (1/3) shall be appointed for one (1) year.
- (b) Vacancies shall be appointed for unexpired terms in the same manner as original appointments.
- (4) A community early childhood council shall collaborate with the District Early Intervention Committee, the Preschool Interagency Planning Council, and other existing interagency groups in the service area.
- (5) A community early childhood council may apply for a competitive grant from the authority, consistent with a state plan for grant participation as established by the authority. Grant proposals shall:

- (a) Include a needs assessment and budget proposal for the respective service area served by a council;
 - (b) Not include administrative costs that exceed five percent (5%); and
 - (c) Contain a signed statement from each member of the council certifying that no program, agency, or individual that may receive part of an award would constitute a conflict of interest under KRS Chapter 11A for the council member. Issues concerning conflicts of interest shall be submitted to the Executive Branch Ethics Commission for resolution.
- (6) A community early childhood council shall submit a quarterly report to the authority that details the activities and services of the council, including the progress that the council has made toward addressing the early childhood development goals for its designated service area and recommendations that may be included in the state plan.
- (7) Any records that are in the custody of a community early childhood council, a designated service provider, or a grantee that contain personal and identifying information relating to a family or children receiving services through the council shall be confidential and not subject to public disclosure, except as otherwise authorized by law.

2B. THE EARLY CHILDHOOD BUSINESS COUNCIL

SECTION 5. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

- (1) The Early Childhood Business Council is created and attached to the Office of Early Childhood Development, Office of the Governor, for administrative purposes. The function of the council shall be to:
- (a) Involve the corporate community, county judge/executives, and mayors in supporting issues of importance to working families with young children in the Commonwealth; and

- (b) Collect and disseminate information about the various ways business and local government can become involved in supporting early childhood.
- (2) (a) The Early Childhood Business Council shall consist of fifteen (15) members appointed by the Governor, who shall also appoint the chair. Members shall serve for a term of two (2) years and until their successors are appointed and qualify, except that for those members initially appointed, the terms are as follows:
1. Five (5) members shall be appointed for three (3) years;
 2. Five (5) members shall be appointed for two (2) years; and
 3. Five (5) members shall be appointed for one (1) year.
- (b) Vacancies shall be appointed for unexpired terms in the same manner as original appointments. Members may not serve more than a total of three (3) terms.
- (c) Members who are eligible to be appointed shall have demonstrated an investment or interest in early childhood development.
- (3) Members of the Early Childhood Business Council shall serve on a voluntary basis, receive a fixed per diem set by the authority, and be reimbursed for their expenses in accordance with state travel expense and reimbursement administrative regulations.
- (4) The Early Childhood Business Council shall meet at least once every three (3) months and shall make reports in accordance with requirements established by the authority that include recommendations for the state plan.

2C. EARLY CHILDHOOD

PROFESSIONAL DEVELOPMENT COUNCIL

SECTION 6. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

- (1) The Early Childhood Professional Development Council is created and attached

to the Office of Early Childhood Development, Office of the Governor, for administrative purposes. The Early Childhood Professional Development Council shall be composed of fifteen (15) members appointed by the Governor, who shall also appoint the chair. Members shall be appointed for a term of four (4) years and the council shall cease to exist four (4) years after the effective date of this Act, unless reauthorized by the General Assembly. Members of the council shall have experience in early child care and education.

(2) The Early Childhood Professional Development Council, in collaboration with the Council on Postsecondary Education, shall:

(a) Work with existing entities to develop an early child care and education credential system to facilitate the attraction and retention of persons who provide early child-care and education services;

(b) Work to develop a seamless system of professional development beginning with entry level employment in early child care and education and proceeding through a master's degree-level program.

(3) The Early Childhood Professional Development Council shall make reports in accordance with requirements established by the authority that include recommendations for the state plan.

(4) Members of the Early Childhood Professional Development Council shall serve on a voluntary basis, receive a fixed per diem set by the authority, and be reimbursed for their expenses in accordance with state travel expense and reimbursement administrative regulations.

2D. KENTUCKY EARLY INTERVENTION SYSTEM

INTERAGENCY COORDINATING COUNCIL

Section 7. KRS 200.658 is amended to read as follows:

- (1) There is hereby created the Kentucky Early Intervention System Interagency Coordinating Council to be comprised of twenty-five (25) members to be appointed

by the Governor to serve a term of three (3) years. The members of the council shall be geographically and culturally representative of the population of the Commonwealth and conform to the requirements of federal law and regulations. For administrative purposes, the council shall be attached to the Early Childhood Development Authority~~[Cabinet for Health Services]~~. Pursuant to federal law and regulations, the membership shall be as follows:

- (a) At least five (5) members shall be the parents, including minority parents, of a child with a disability who is twelve (12) years of age or less, with at least one (1) being the parent of a child six (6) years of age or less. Each parent shall have knowledge of or experience with programs for infants and toddlers with disabilities;
- (b) At least five (5) members shall be public or private providers of early intervention services to infants and toddlers with disabilities;
- (c) At least one (1) member shall be a member of the Kentucky General Assembly;
- (d) At least one (1) member shall be representative of an entity responsible for personnel preparation and may include personnel from an institution of higher education or preservice training organization;
- (e) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Public Health;
- (f) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Medicaid Services;
- (g) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Mental Health and Mental Retardation Services;

- (h) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Social Services;
- (i) At least one (1) member shall be the commissioner or designee of the Department of Education;
- (j) At least one (1) member shall be the commissioner or designee of the Department of Insurance; and
- (k) At least one (1) member shall be a representative of the Commission for ~~Handicapped~~ Children with Special Health Care Needs.

(2) In matters concerning the Kentucky Early Intervention System, the council shall advise and assist the cabinet in areas including, but not limited to, the following:

- (a) Development and implementation of the statewide system and the administrative regulations promulgated pursuant to KRS 200.650 to 200.676;
 - (b) Achieving the full participation, coordination, and cooperation of all appropriate entities in the state, including, but not limited to, individuals, departments, and agencies, through the promotion of interagency agreements;
 - (c) Establishing a process to seek information from service providers, service coordinators, parents, and others concerning the identification of service delivery problems and the resolution of those problems;
 - (d) Resolution of disputes, to the extent deemed appropriate by the cabinet;
 - (e) Provision of appropriate services for children from birth to three (3)~~five (5)~~ years of age;
 - (f) Identify sources of fiscal and other support services for early intervention programs;
 - (g) Preparing applications to Part ~~CH~~ of the Federal Individuals with Disabilities Education Act (IDEA) and any amendments to the applications;
- and

- (h) Transitioning of infants and toddlers with disabilities and their families from the early intervention system to appropriate services provided under Part B of the Federal Individuals with Disabilities Education Act (IDEA) operated by the state Department of Education.
- (3) The council shall prepare no later than December 30 of each year an annual report on the progress toward and any barriers to full implementation of the Kentucky Early Intervention System for infants and toddlers with disabilities and their families. The report shall include recommendations concerning the Kentucky Early Intervention System and shall be submitted to the Governor, Legislative Research Commission, and the Secretary of the United States Department of Education.
- (4) No member of the council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of the existence of a conflict of interest.

PART 3

EARLY CHILDHOOD HEALTH INITIATIVE

Section 8. KRS 156.160 is amended to read as follows:

- (1) With the advice of the Local Superintendents Advisory Council, the Kentucky Board of Education shall promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. These regulations shall comply with the expected outcomes for students and schools set forth in KRS 158.6451. Administrative regulations shall be promulgated for the following:
 - (a) Courses of study for the different grades and kinds of common schools identifying the common curriculum content directly tied to the goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451, and KRS 158.6453 and distributed to local school districts and schools. They shall include the following: The courses of study for students

shall include American sign language which shall be accepted as meeting the foreign language requirements in common schools notwithstanding other provisions of law;

- (b) The acquisition and use of educational equipment for the schools as recommended by the Council for Education Technology;
- (c) The minimum requirements for high school graduation in light of the expected outcomes for students and schools set forth in KRS 158.6451. Student scores from any assessment administered under KRS 158.6453 that are determined by the National Technical Advisory Panel to be valid and reliable at the individual level shall be included on the student transcript. The National Technical Advisory Panel shall submit its determination to the commissioner of education and the Legislative Research Commission;
- (d) Taking and keeping a school census, and the forms, blanks, and software to be used in taking and keeping the census and in compiling the required reports. The board shall create a statewide student identification numbering system based on students' Social Security numbers. The system shall provide a student identification number similar to, but distinct from, the Social Security number, for each student who does not have a Social Security number or whose parents or guardians choose not to disclose the Social Security number for the student;
- (e) Sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, school buildings, and classrooms. With respect to physical standards of sanitary and protective construction for school buildings, the Kentucky Board of Education shall adopt the Uniform State Building Code;
- (f) Medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the protection of the physical welfare

and safety of the public school children. The administrative regulations shall set requirements for student health standards to be met by all students in grades four (4), eight (8), and twelve (12) pursuant to the outcomes described in KRS 158.6451. The administrative regulations shall permit a student who received a physical examination no more than six (6) months prior to his initial admission to Head Start to substitute that physical examination for the physical examination required by the Kentucky Board of Education of all students upon initial admission to the public schools, if the physical examination given in the Head Start program meets all the requirements of the physical examinations prescribed by the Kentucky Board of Education;

(g) *A vision examination by an optometrist or ophthalmologist that shall be required by the Kentucky Board of Education. The administrative regulations shall require evidence that a vision examination that meets the criteria prescribed by the Kentucky Board of Education has been performed. This evidence shall be submitted to the school no later than January 1 of the first year that the child is enrolled in public school, public preschool, or Head Start program;*

(h) The transportation of children to and from school;

~~(i)(1)~~ The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine;

~~(j)(1)~~ The preparation of budgets and salary schedules for the several school districts under the management and control of the Kentucky Board of Education;

~~(k)(1)~~ A uniform series of forms and blanks, educational and financial, including forms of contracts, for use in the several school districts; and

~~(l)(1)~~ The disposal of real and personal property owned by local boards of

education.

- (2) (a) At the request of a local board of education or a school council, a local school district superintendent shall request that the Kentucky Board of Education waive any administrative regulation promulgated by that board. Beginning in the 1996-97 school year, a request for waiver of any administrative regulation shall be submitted to the Kentucky Board of Education in writing with appropriate justification for the waiver. The Kentucky Board of Education may approve the request when the school district or school has demonstrated circumstances that may include, but are not limited to, the following:
1. An alternative approach will achieve the same result required by the administrative regulation;
 2. Implementation of the administrative regulation will cause a hardship on the school district or school or jeopardize the continuation or development of programs; or
 3. There is a finding of good cause for the waiver.
- (b) The following shall not be subject to waiver:
1. Administrative regulations relating to health and safety;
 2. Administrative regulations relating to civil rights;
 3. Administrative regulations required by federal law; and
 4. Administrative regulations promulgated in accordance with KRS 158.6451, 158.6453, 158.6455, 158.685, and this section, relating to measurement of performance outcomes and determination of successful districts or schools, except upon issues relating to the grade configuration of schools.
- (c) Any waiver granted under this subsection shall be subject to revocation upon a determination by the Kentucky Board of Education that the school district or school holding the waiver has subsequently failed to meet the intent of the

waiver.

- (3) Any private, parochial, or church school may voluntarily comply with curriculum, certification, and textbook standards established by the Kentucky Board of Education and be certified upon application to the board by such schools.

Section 9. KRS 211.645 is amended to read as follows:

As used in KRS 211.647 and Section 11 of this Act~~[213.046]~~, unless the context requires otherwise:

- (1) "Cabinet" means the Cabinet for Health Services;
- (2)~~["Certificate" means the certificate of birth required by KRS 213.046;~~
- ~~(3)~~ "Commission" means the Commission for Children with Special Health Care Needs;
- ~~(3)~~~~(4)~~ "Hard of hearing infant" means a child at birth with a significant hearing loss which prevents the acquisition of speech and language through normal channels;
- ~~(4)~~~~(5)~~ "Auditory screening report" means a written evaluation of an auditory screening as required under Section 11 of this Act~~["Hearing risk certificate" means the certificate that includes questions which identify newborn babies with a higher risk than normal for hearing loss];~~
- ~~(5)~~~~(6)~~ "Infant at high risk of hearing loss"~~["High-risk infant"]~~ means a child at birth who is at a higher risk than normal of being hard of hearing due to one (1) or more of the following factors present at birth:
- (a) Family history of a congenital hearing loss;
 - (b) Rubella or virus during pregnancy;
 - (c) Congenital ear, nose, or throat anomalies;
 - (d) Below-normal birth weight;
 - (e) Abnormal level of jaundice;
 - (f) Anoxia or apnea;~~[-and]~~
 - (g) A low APGAR score derived from the evaluation of the infant's color, muscle

tone, reflexes, pulse rate, and respiration; or

(h) An auditory screening indicating a hearing loss.

Section 10. KRS 211.647 is amended to read as follows:

- (1) The commission, on receipt of an auditory screening report of an infant from a hospital or alternative birthing center in accordance with Section 11 of this Act shall review each auditory screening report that indicates a potential hearing loss. The commission shall contact the parents to schedule follow-up evaluations or make a referral for evaluations within three (3) business days~~[the hearing risk certificates from the cabinet, shall conduct activities necessary to identify high-risk infants. It shall establish a program to provide medical and educational information to the families, assist the families in securing screening, diagnostic, and medical services at a minimal cost at a center or at a location as close to the child's residence as possible and refer the parents to agencies or organizations which provide educational programs for the child and the family].~~
- (2) ~~[The commission's process for identifying high-risk infants shall include a timely review of all hearing risk certificates to identify the presence of factors determined to occur frequently with hearing loss in newborn infants.]~~The commission shall secure information missing from birth certificates or hospital referral reports which is relevant to identifying~~[high-risk]~~ infants with a hearing loss.
- (3) If the hearing evaluation performed by the commission contains evidence of a hearing loss, within forty-eight (48) hours the commission shall:
 - (a) Contact the attending physician and parents; and
 - (b) Make a referral to the Kentucky Early Intervention System point of entry in the service area of the child's residence for services under KRS 200.664.
- (4) The commission shall forward a report of a hearing evaluation that indicates a hearing loss, with no information that personally identifies the child, to:
 - (a) The Kentucky Commission on the Deaf and Hard of Hearing for census

purposes; and

(b) The Kentucky Birth Surveillance Registry for information purposes.

- (5) [The commission shall involve agencies and organizations which provide services to deaf and hard of hearing children, including, but not limited to, the Department of Education, the Cabinet for Health Services, and the Commission on the Deaf and Hard of Hearing, in planning for and implementation of this section.] Cumulative demographic data of identified [high risk] infants with a hearing loss shall be made available to agencies and organizations including, but not limited to, the Cabinet for Health Services and the Early Childhood Development Authority, requesting the information for planning purposes.

SECTION 11. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

- (1) As a condition of licensure or relicensure, all hospitals offering obstetric services and alternative birthing centers with at least forty (40) births per year shall provide an auditory screening for all infants using one (1) of the methods approved by the Early Childhood Development Authority by administrative regulation promulgated in accordance with KRS Chapter 13A.
- (2) An auditory screening report that indicates a finding of potential hearing loss shall be forwarded by the hospital or alternative birthing center within twenty-four (24) hours of receipt to the:
- (a) Attending physician;
- (b) Parents; and
- (c) Commission for Children with Special Health Care Needs for evaluation or referral for further evaluation in accordance with Section 10 of this Act.
- (3) An auditory screening report that does not indicate a potential hearing loss shall be forwarded within one (1) week to the Commission for Children with Special Health Care Needs with no information that personally identifies the child.

PART 4

EARLY CHILDHOOD PARENTING SUPPORT

SECTION 12. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) There is established within the Cabinet for Health Services the Health Access Nurturing Development Services (HANDS) program as a voluntary statewide home visitation program, for the purpose of providing assistance to at-risk parents during the prenatal period and until the child's third birthday. The HANDS program recognizes that parents are the primary decision-makers for their children. The goals of the HANDS program are to:
- (a) Facilitate safe and healthy delivery of babies;
 - (b) Provide information about optimal child growth and human development;
 - (c) Facilitate the safety and health of homes; and
 - (d) Encourage greater self-sufficiency of families.
- (2) The cabinet shall administer the HANDS program in cooperation with the Cabinet for Families and Children and the local public health departments. The voluntary home visitation program may supplement, but shall not duplicate, any existing program that provides assistance to parents of young children.
- (3) Participants in the HANDS program shall express informed consent to participate by written agreement on a form promulgated by the Cabinet for Health Services.

PART 5.

ACCESS TO QUALITY CHILD CARE

SECTION 13. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) It is the intent of the General Assembly to create a seamless system to upgrade the professional development of persons who are employed or provide training in a

child-care or early childhood setting through scholarships, merit awards, and monetary incentives, to assist these persons in obtaining a child development associate credential, post-secondary certificate, diploma, degree, or specialty credential in an area of study determined by the authority as recommended by the professional development council.

(2) Eligibility for scholarship funds shall be for individuals who do not have access to professional development funds from other education programs that receive state or federal funds, and who are:

(a) Employed at least twenty (20) hours per week providing services in a child-care or early childhood setting; or

(b) Involved in providing professional development training for teachers in an early childhood setting.

(3) The Kentucky Higher Education Assistance Authority, after consultation with the Early Childhood Development Authority and the Cabinet for Families and Children, shall promulgate administrative regulations, including a system of monetary incentives for scholarship program participants for completing classes, in accordance with KRS Chapter 13A as necessary to implement this section.

SECTION 14. A NEW SECTION OF KRS 199.892 TO 199.896 IS CREATED TO READ AS FOLLOWS:

(1) The Early Childhood Development Authority shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish a program of monetary incentives including but not limited to an increased child-care subsidy and a one-time merit achievement award for child-care centers and certified family child-care homes that are tied to a quality rating system for child care as established under Section 15 of this Act.

(2) The monetary incentive program shall be reviewed annually by the authority for the purpose of determining future opportunities to provide incentives.

- (3) Participation in the program of monetary incentives and in the quality rating system by child-care centers and certified family child-care homes is voluntary.
- (4) The Cabinet for Families and Children shall encourage the professional development of persons who are employed or provide training in a child-care or early childhood setting by facilitating their participation in the scholarship program for obtaining a child development associate credential, postsecondary certificate, diploma, degree, or specialty credential as established under Section 13 of this Act.

SECTION 15. A NEW SECTION OF KRS 199.892 TO 199.896 IS CREATED TO READ AS FOLLOWS:

- (1) The Early Childhood Development Authority shall, in consultation with child-care providers, the Cabinet for Families and Children, the Cabinet for Health Services, and others, including but not limited to child-care resource and referral agencies and family resource centers, develop a voluntary quality-based graduated child-care rating system for licensed child-care and certified family child-care homes based on, but not limited to:
- (a) Child to caregiver ratios;
 - (b) Child-care staff training;
 - (c) Program curriculum; and
 - (d) Program regulatory compliance.
- (2) The Cabinet for Families and Children shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement:
- (a) The voluntary quality-based graduated child-care rating system for child-care and certified family child-care homes developed under subsection (1) of this section;
 - (b) Agency time frames of reviews for rating;
 - (c) An appellate process under KRS Chapter 13B; and

(d) The ability of providers to request reevaluation for rating.

SECTION 16. A NEW SECTION OF KRS 199.892 TO 199.896 IS CREATED TO READ AS FOLLOWS:

(1) The secretaries of the Cabinet for Families and Children and Cabinet for Health Services, or their designees, shall collaborate on the expansion of the Healthy Start in Child Care Program. The goals of the Healthy Start in Child Care program are:

(a) To train and educate child-care providers in health and safety;

(b) Provide nutrition consultation to parents;

(c) Increase awareness of methods for the prevention of communicable diseases in child-care settings; and

(d) Provide information to parents of children who attend child care.

(2) The Cabinet for Families and Children shall establish technical assistance positions dedicated to child care within the Kentucky child-care resource and referral agencies in order to offer technical assistance to child-care providers to upgrade quality in early child-care and education facilities.

Section 17. KRS 199.894 is amended to read as follows:

As used in KRS 199.892 to 199.896, unless the context otherwise requires:

- (1) "Cabinet" means the Cabinet for Families and Children;
- (2) "Secretary" means secretary for families and children;
- (3) "Child[Day]-care center" means any child-care center[facility] which provides full or part-time care, day or night, to at least seven (7) children who are not the children, grandchildren, nieces, nephews, or children in legal custody of the operator. "Child[Day]-care center" shall not include any child-care facility operated by a religious organization while religious services are being conducted, or a youth development agency. For the purposes of this section, "youth development agency" means a program with tax-exempt status under 26 U.S.C. sec. 501(c)(3), which

operates continuously throughout the year as an outside-school-hours center for youth who are six (6) years of age or older, and for which there are no fee or scheduled-care arrangements with the parent or guardian of the youth served;

(4) "Department" means the Department for Community Based Services; and

(5) "Family child-care home" means a private home that provides full or part-time care day or night for six (6) or fewer children who are not the children, siblings, stepchildren, grandchildren, nieces, nephews, or children in legal custody of the provider.

Section 18. KRS 199.896 is amended to read as follows:

- (1) No person, association, or organization shall conduct, operate, maintain, or advertise any child[day]-care center[~~or home~~] without obtaining a license as provided in KRS 199.892 to 199.896.
- (2) The secretary may promulgate administrative regulations pursuant to KRS Chapter 13A relating to license fees and may establish standards of care and service for a child[~~the day~~]-care center, criteria for the denial of a license if criminal records indicate convictions that may impact the safety and security of children in care, and procedures for enforcement of penalties[~~; provided, however, any administrative regulations promulgated pursuant to KRS Chapter 13A shall prohibit the employment of persons convicted of any sexual offense~~].
- (3)[~~If the day care center does not meet the standards prescribed for licensing by the secretary, a provisional license may be issued and remain in effect for a period of six (6) months.~~]
- (4)] Each initial application for a license shall be made to the cabinet and shall be accompanied by a fee of not more than fifty dollars (\$50) and shall[~~, excepting provisional licenses,~~] be renewable annually upon expiration and reapplication when accompanied by a fee of twenty-five dollars (\$25). Regular licenses and renewals thereof shall expire one (1) year from their effective date.

- ~~(4)~~~~(5)~~ No child~~[day]~~-care center shall be refused a license or have its license revoked for failure to meet standards set by the secretary until after the expiration of a period not to exceed six (6) months from the date of the first official notice that the standards have not been met. If, however, the cabinet has probable cause to believe that an immediate threat to the public health, safety, or welfare exists, the cabinet may take emergency action pursuant to KRS 13B.125. All administrative hearings conducted under authority of KRS 199.892 to 199.896 shall be conducted in accordance with KRS Chapter 13B.
- (5) If, upon inspection or investigation, the inspector general finds that a child-care center licensed under this section has violated the administrative regulations, standards, or requirements of the cabinet, the inspector general shall issue a statement of deficiency to the center containing:
- (a) A statement of fact;
- (b) A statement of how an administrative regulation, standard, or requirement of the cabinet was violated; and
- (c) The time frame, negotiated with the child-care center, within which a violation is to be corrected, except that a violation that poses an immediate threat to the health, safety, or welfare of children in the center shall be corrected in no event later than five (5) working days from the date of the statement of deficiency.
- (6) The Cabinet for Families and Children, in consultation with the Cabinet for Health Services, Office of the Inspector General, shall establish by administrative regulations promulgated in accordance with KRS Chapter 13A an informal dispute resolution process containing at least two (2) separate levels of review through which a child-care provider may dispute licensure deficiencies that have an adverse effect on the child-care provider's license.
- (7) A child-care center shall have the right to appeal to the Cabinet for Health

Services under KRS Chapter 13B any action adverse to its license or the assessment of a civil penalty issued by the inspector general as the result of a violation contained in a statement of deficiency within twenty (20) days of the issuance of the action or assessment of the civil penalty. An appeal shall not act to stay the correction of a violation.

(8) In assessing the civil penalty to be levied against a child-care center for a violation contained in a statement of deficiency issued under this section, the inspector general or the inspector general's designee shall take into consideration the following factors:

(a) The gravity of the threat to the health, safety, or welfare of children posed by the violation;

(b) The number and type of previous violations of the child-care center;

(c) The reasonable diligence exercised by the child-care center and efforts to correct the violation; and

(d) The amount of assessment necessary to assure immediate and continued compliance.

(9) Upon a child-care center's failure to take action to correct a violation of the administrative regulations, standards, or requirements of the cabinet contained in a statement of deficiency, or at any time when the operation of a child-care center poses an immediate threat to the health, safety, or welfare of children in the center, and the child-care center continues to operate after the cabinet has taken emergency action to deny, suspend, or revoke its license, the cabinet or the cabinet's designee shall take at least one (1) of the following actions against the center:

(a) Institute proceedings to obtain an order compelling compliance with the administrative regulations, standards, and requirements of the cabinet;

(b) Institute injunctive proceedings in Circuit Court to terminate the operation

of the center;

(c) Institute action to discontinue payment of child-care subsidies; or

(d) Suspend or revoke the license or impose other penalties provided by law.

~~(10)~~~~(6)~~ Upon request of any person, the cabinet shall provide information regarding the denial, revocation, suspension, or violation of any type of child~~[day]~~-care center license of the operator. Identifying information regarding children and their families shall remain confidential.

~~(11)~~~~(7)~~ The cabinet shall provide, upon request, public information regarding the inspections of and the plans of correction for the child~~[day]~~-care center within the past year. All information distributed by the cabinet under this subsection shall include a statement indicating that the reports as provided under this subsection from the past five (5) years are available from the child~~[day]~~-care center upon the parent's, custodian's, guardian's, or other interested person's request.

~~(12)~~~~(8)~~ All fees collected under the provisions of KRS 199.892 to 199.896 for license and certification applications shall be paid into the State Treasury and credited to a special fund for the purpose of administering KRS 199.892 to 199.896 including the payment of expenses of and to the participants in child-care workshops. The funds collected are hereby appropriated for the use of the cabinet. The balance of the special fund shall lapse to the general fund at the end of each biennium.

~~(13)~~~~(9)~~ Any advertisement for child-care services shall include the address of where the service is being provided.

~~(14)~~~~(10)~~ All inspections of licensed and unlicensed child~~[day]~~-care centers by the Cabinet for Families and Children and the Cabinet for Health Services shall be unannounced.

~~(15)~~~~(11)~~ All employees and owners of a child~~[day]~~-care center who provide care to children shall demonstrate within the first three (3) months of employment completion of at least a total of six (6) hours of orientation in the following areas:

- (a) Basic health, safety, and sanitation;
- (b) Recognizing and reporting child abuse; and
- (c) Developmentally appropriate child-care practice.

~~(16)~~~~(12)~~ All employees and owners of a child~~[day]~~-care center who provide care to children shall annually demonstrate to the department completion of at least six (6) hours of training in child development.

~~(17)~~~~(13)~~ The Cabinet for Families and Children shall make available either through the development or approval of a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection ~~(15)~~~~(11)~~ of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection ~~(15)~~~~(11)~~ of this section.

~~(18)~~~~(14)~~ Child~~[day]~~-care centers licensed pursuant to this section and family child-care homes certified pursuant to KRS 199.8982 shall not use corporal physical discipline, including the use of spanking, shaking, or paddling, as a means of punishment, discipline, behavior modification, or for any other reason. For the purposes of this section, "corporal physical discipline" means the deliberate infliction of physical pain and does not include spontaneous physical contact which is intended to protect a child from immediate danger.

~~(19)~~~~(15)~~ Directors and employees of child~~[day]~~-care centers in a position that involves supervisory or disciplinary power over a minor, or direct contact with a minor, shall submit to a criminal record check in accordance with Section 25 of this Act. The application shall be denied if the applicant has been found by the Cabinet for Families and Children or a court to have abused or neglected a child or has been convicted of a violent crime or sex crime as defined in Section 25 of this Act~~[shall not have been found by the cabinet or a court to have abused or neglected a child].~~

(20) A director or employee of a child-care center may be employed on a probationary status pending receipt of the criminal background check. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.

Section 19. KRS 199.8982 is amended to read as follows:

~~[(1) As used in this section, unless the context requires otherwise:~~

- ~~(a) "Cabinet" means the Cabinet for Families and Children;~~
- ~~(b) "Department" means the Department for Social Services; and~~
- ~~(c) "Family child care home" means a private home which provides full or part-time care day or night for six (6) or fewer children who are not the children, siblings, stepchildren, grandchildren, nieces, nephews, or children in legal custody of the provider.]~~

~~(1)(2)~~ (a) The cabinet shall establish a family child-care home certification program which shall be administered by the department. A family child-care provider shall apply for certification of the provider's home if the provider is caring for four (4) to six (6) children unrelated to the provider. A family child-care provider caring for three (3) or fewer children may apply for certification of the provider's home at the discretion of the provider. Applicants for certification shall not have been found by the cabinet or a court to have abused or neglected a child, and shall meet the following minimum requirements:

1. Submit two (2) written character references;
2. Provide a written statement from a physician that the applicant is in good health;
3. Submit to a criminal record check in accordance with Section 25 of this Act. The application shall be denied if the applicant has been convicted of a violent crime or sex crime as defined in Section 25 of this Act ~~as provided by KRS 17.165~~];

4. Provide smoke detectors, a telephone, an adequate water supply, sufficient lighting and space, and a safe environment in the residence in which care is provided;
 5. Provide a copy of the results of a tuberculosis skin test for the applicant administered within thirty (30) days of the date of application for certification; and
 6. Demonstrate completion of a total of at least six (6) hours of training in the following areas within three (3) months of application for certification:
 - a. Basic health, safety, and sanitation;
 - b. Recognizing and reporting child abuse; and
 - c. Developmentally appropriate child-care practice.
- (b) Initial applications for certification shall be made to the department and shall be accompanied by a ten dollar (\$10) certification fee. The department shall issue a certificate of operation upon inspecting the family child-care home and determining the provider's compliance with the provisions of this section. The inspection shall be unannounced. A certificate of operation issued pursuant to this section shall not be transferable and shall be renewed every two (2) years for a fee of ten dollars (\$10).
- (c) A certified family child-care provider shall display the certificate of operation in a prominent place within the residence in which care is provided. The cabinet shall provide the certified family child-care provider with written information explaining the requirements for a family day-care provider and instructions on the method of reporting violations of the requirements which the provider shall distribute to parents.
- (d) Upon request of any person, the cabinet shall provide information regarding the denial, revocation, suspension, or violation of any type of day-care license

of the family child-care provider. Identifying information regarding children and their families shall remain confidential.

- (e) The cabinet shall provide, upon request, public information regarding the inspections of and the plans of correction for the family child-care home within the past year. All information distributed by the cabinet under this paragraph shall include a statement indicating that the reports as provided under this paragraph from the past five (5) years are available from the family child-care home upon the parent's, custodian's, guardian's, or other interested person's request.
- (f) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A which establish standards for the issuance, monitoring, release of information under this section and KRS 199.896 and 199.898, renewal, denial, revocation, and suspension of a certificate of operation for a family child-care home and establish criteria for the denial of certification if criminal records indicate convictions that may impact the safety and security of children in care; ~~provided, however, any administrative regulations promulgated in accordance with KRS Chapter 13A shall prohibit the employment of persons convicted of any sexual offense~~. A denial, suspension, or revocation of a certificate may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B. If the cabinet has probable cause to believe that there is an immediate threat to the public health, safety, or welfare, the cabinet may take emergency action to suspend a certificate pursuant to KRS 13B.125. The cabinet shall promulgate administrative regulations to impose minimum staff-to-child ratios. The cabinet may promulgate administrative regulations relating to other requirements necessary to ensure minimum safety in family child-care homes. The cabinet shall develop and provide an "easy-to-read" guide containing the

following information to a family child-care provider seeking certification of his home:

1. Certification requirements and procedures;
2. Information about available child-care training; and
3. Child-care food sponsoring organizations.

~~(2)~~~~(3)~~ Family child-care providers shall annually demonstrate to the department completion of at least six (6) hours of training in child development.

~~(3)~~~~(4)~~ The cabinet shall, either through the development of or approval of, make available a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection (2)(a)6. of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection (2)(a)6. of this section.

Section 20. KRS 199.899 is amended to read as follows:

(1) The Cabinet for Families and Children shall conduct a market-rate survey at least biennially to set the minimum~~[determine the]~~ rates paid by the cabinet for child-care services receiving public funds in the Commonwealth. The market-rate survey shall:

- (a) Survey all child-care programs in the Commonwealth licensed pursuant to KRS 199.896 or certified pursuant to KRS 199.8982;
- (b) Determine market rates; and
- (c) Make public its findings.

~~(2)~~ ~~By October 1, 1993, the cabinet shall report to the General Assembly on the feasibility of paying a higher rate for child-care programs which attain accreditation from a national organization that the cabinet determines has accreditation standards that contribute to high-quality child care.~~

~~(3)~~ In counties containing no more than two (2) child-care programs of the same type regulated by the cabinet, the cabinet shall pay the rate charged by the program up to

the maximum allowable market rate, set in accordance with federal regulations, paid to a program of the same type in that area development district.

(3) The Cabinet for Families and Children shall evaluate, at least annually, the adequacy of the child-care subsidy to enable low income families in need of child-care services to obtain child care.

Section 21. KRS 199.8992 is amended to read as follows:

- (1) To the extent possible with available funds, the Cabinet for Families and Children shall develop through a system of contracts, a statewide network of community-based child-care resource and referral services. The network shall include one (1) resource and referral agency per area development district as designated by the cabinet. To avoid duplication of services, priority for receiving designation by the cabinet shall be given to existing child-care resource and referral organizations which are public or private, nonprofit, community-based agencies. Each resource and referral agency shall:
 - (a) Maintain a uniform database in a format developed by the cabinet of all child-~~day~~-care providers licensed pursuant to KRS 199.896 or certified pursuant to KRS 199.8982 in the service area, including information on the availability of care;
 - (b) Provide consumer education to families seeking child-~~day~~-care services;
 - (c) Provide timely referrals of available child-~~day~~-care providers to families seeking child-~~day~~-care services;
 - (d) Recruit child-~~day~~-care providers in areas where there is an identified need as identified pursuant to paragraph (f) of this subsection;
 - (e) Coordinate, with the cabinet, training for child-~~day~~-care providers and provide technical assistance to employers, current and potential child-~~day~~-care providers, and the community at large;
 - (f) Collect and analyze data on the supply of, and demand for, child-~~day~~-care in

the community;

- (g) Stimulate employer involvement in improving the affordability, availability, safety, and quality of child care for their employees and for the community;
- (h) Provide written educational materials to parents and child-~~day~~-care providers;~~and~~
- (i) Not operate a child-~~day~~-care center on behalf of an employer or on their own unless no existing provider is willing or able to provide the service at the current market rate. This paragraph shall not apply to child care provided by a resource and referral agency to an employer prior to July 14, 1992; and
- (j) Form community early childhood councils in cooperation with family resource centers and other local organizations or agencies.

- (2) To the extent possible with available funds, the cabinet shall award contracts in accordance with KRS Chapter 45A to:
 - (a) Coordinate existing resource and referral services;
 - (b) Expand resource and referral services to unserved areas; and
 - (c) Improve services provided by the designated resources and referral agency.
- (3) When awarding the contracts provided for in subsection (2) of this section, priority shall be given to agencies which demonstrate the ability to provide local matching funds in an amount equal to twenty-five percent (25%) of the total amount of the contract. Contracts shall be awarded for a minimum period of up to one (1) year. Start-up contracts may be awarded in up to four (4) area development districts per year until each area development district has one (1) designated child-care resource and referral agency. The awarding of a contract pursuant to this section shall not create a continuing obligation for the cabinet to fund a resource and referral agency. The cabinet shall require applicants to submit a plan for providing the services required by subsection (1) of this section.

Section 22. KRS 199.8994 is amended to read as follows:

- (1) All child-day-care funds administered by the cabinet, including Title XX of the Social Security Act, shall be administered by the Cabinet for Families and Children to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served. To the extent permitted by federal law or regulations, requirements relating to application, eligibility, provider agreements, and payment for child-care services shall be the same regardless of the source of public funding.
- (2) The cabinet shall, to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served, develop a system which provides a single intake point in each county through which parents seeking public subsidies for child-care services can make application.
- (3) The cabinet shall, subject to the extent funds are available, cooperate with the Cabinet for Health Services to fund and establish dedicated child-care licensing surveyor positions within the Division of Licensing and Regulation to conduct all the cabinet's child-care licensing activities. The cabinet shall have the authority to request the transfer of funds to establish these positions. Where possible, dedicated child-care surveyors shall have expertise or experience in child-care or early childhood education.
- (4) The targeted ratio of dedicated child-care licensing surveyor positions shall be one (1) surveyor for each fifty (50) child-care facilities in order to allow for the provision of an expedient, constructive, and thorough licensing visit.
- (5) The cabinet shall, in cooperation with the Division of Licensing and Regulation, Cabinet for Health Services, provide appropriate specialized training for child-care surveyors.
- (6) (a) The cabinet shall evaluate ways to improve the monitoring of unregulated child-care providers that receive a public subsidy for child care, and promulgate administrative regulations in accordance with KRS Chapter

13A that establish minimum health and safety standards, limitations on the maximum number of children in care, training requirements for a child-care provider that receives a child-care subsidy administered by the cabinet, and criteria for the denial of subsidies if criminal records indicate convictions that impact the safety and security of children in care.

(b) If the cabinet has probable cause to believe that there is an immediate threat to the public health, safety, or welfare, it may take emergency action to deny a public subsidy for child-care services under KRS 13B.125.

Section 23. KRS 199.8996 is amended to read as follows:

The Cabinet for Families and Children shall prepare the following reports to the General Assembly on child-care programs, and shall make them available to the public:

- (1) A quarterly report detailing the number of children and amounts of child-care subsidies provided in each area development district;
- (2) A quarterly report on administrative expenses incurred in the operation of child-care subsidy programs;
- (3) A quarterly report on disbursements of federal child-care block grant funds for training, resource and referral, and similar activities; and
- (4) Beginning July 15, 1993, an annual report summarizing the average child-care subsidy activities per month in all Kentucky counties.
- (5) The cabinet shall file an annual report on its evaluation of the adequacy of the child-care subsidy to enable low income families in need of child-care services to obtain child care with the Early Childhood Development Authority and the Legislative Research Commission.
- (6) The cabinet shall file an annual report on the number of dedicated child-care licensing surveyor positions and the ratio of surveyors to child-care facilities with the Early Childhood Development Authority and the Legislative Research Commission.

Section 24. KRS 199.990 is amended to read as follows:

- (1) Any person violating any of the provisions of KRS 199.380 to 199.400 shall be guilty of an offense, and upon conviction thereof, shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than twelve (12) months, or be both fined and imprisoned, in the discretion of the court.
- (2) Any person who violates any of the provisions of KRS 199.430, 199.470, 199.473, 199.570 and 199.590 except subsection (2), or 199.640 to 199.670, or any rule or regulation under such sections the violation of which is made unlawful shall be fined not less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000) or imprisoned for not more than six (6) months, or both. Each day such violation continues shall constitute a separate offense.
- (3) Any person who willfully violates any other of the provisions of KRS 199.420 to 199.670 or any rule or regulation thereunder, the violation of which is made unlawful under the terms of those sections, and for which no other penalty is prescribed in those sections or in subsection (1) of this section, or in any other applicable statute, shall be fined not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) or imprisoned for not more than thirty (30) days, or both.
- (4) Any violation of the regulations, standards, or requirements of the cabinet under~~person who violates any of~~ the provisions of KRS 199.896 that poses an immediate threat to the health, safety, or welfare of any child served by the child-care center shall be subject to a civil penalty of no more than one thousand dollars (\$1,000) for each occurrence. Treble penalties shall be assessed for two (2) or more violations within twelve (12) months. All money collected as a result of civil penalties assessed under the provisions of KRS 199.896 shall be paid into the State Treasury and credited to a special fund for the purpose of the Early Childhood Scholarship Program created in accordance with Section 13 of this

Act. The balance of the fund shall not lapse to the general fund at the end of each biennium.

(5) A person who commits a violation of the regulations, standards, or requirements of the cabinet under the provisions of Section 18 of this Act shall be fined not less than one thousand dollars (\$1,000) or imprisoned for not more than twelve (12) months, or be fined and imprisoned, at the discretion of the court.

~~(6)(5)~~ Any person who violates any of the provisions of KRS 199.590(2) shall be guilty of a Class D felony.

Section 25. KRS 17.165 is amended to read as follows:

- (1) As used in this section, "sex crime" means a conviction or a plea of guilty for a violation or attempted violation of KRS 510.040 to 510.140, 529.020 to 529.050, 530.020, 530.065, 531.310, 531.320, and 531.340 to 531.370. Conviction for a violation or attempted violation of an offense committed outside the Commonwealth of Kentucky is a sex crime if such offense would have been a crime in Kentucky under one (1) of the above sections if committed in Kentucky.
- (2) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim, or rape in the first degree or sodomy in the first degree of the victim or serious physical injury to a victim.
- (3) As used in this section, "violent crime" shall mean a conviction of or a plea of guilty to the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim, or rape in the first degree or sodomy in the first degree of the victim or serious physical injury to a victim.
- (4) No child-care center as defined in KRS 199.894 shall employ, in a position which involves supervisory or disciplinary power over a minor, or direct contact with a minor, any person who is a violent offender or has been convicted of a sex crime ~~[classified as a felony. Operators of child-care centers may employ persons~~

~~convicted of sex crimes classified as a misdemeanor at their discretion].~~ Each child-care center shall request all conviction information for any applicant for employment from the Justice Cabinet or the Administrative Office of the Courts prior to employing the applicant.

(5) No child-care provider that is required to be certified under Section 19 of this Act or that receives a public child-care subsidy administered by the cabinet or an adult who resides on the premises of the child-care provider and has direct contact with a minor shall have been convicted of a violent crime, or a sex crime, or have been found by the Cabinet for Families and Children or a court to have abused or neglected a child.

(6) Each application form, provided by the employer to the applicant, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."

~~(7)(6)~~ Any request for records under subsection (4) of this section shall be on a form approved by the Justice Cabinet or the Administrative Office of the Courts, and the cabinet may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request.

~~(8)(7)~~ The provisions of this section shall apply to all applicants for initial employment in a position which involves supervisory or disciplinary power over a minor after July 15, 1988.

Section 26. KRS 17.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 17.320 to 17.340 shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500).
- (2) Any public official or employee who knowingly or intentionally makes, or causes to be made, a false return of information to the department shall be punished by confinement in jail for not more than ninety (90) days, by a fine not exceeding five

232x

hundred dollars (\$500), or both.

- (3) (a) Any child-care center which violates subsection (4) of KRS 17.165 or child-care provider that violates subsection (5) of KRS 17.165 may be liable for license or certification revocation and the imposition of a civil penalty of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000) to be imposed and collected by the Cabinet for Families and Children; and
- (b) In addition to penalties listed in this subsection, any child-care center which violates subsection (4) of KRS 17.165 or child-care provider that violates subsection (5) of KRS 17.165 shall be fined not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000).

Section 27. KRS 213.046 is amended to read as follows:

- (1) A certificate of birth for each live birth which occurs in the Commonwealth shall be filed with the local registrar within ten (10) days after such birth and shall be registered if it has been completed and filed in accordance with this section. ~~[-A hearing risk certificate provided by the Commission for Children with Special Health Care Needs, with questions pertaining to hearing loss in newborn infants, shall accompany the certificate of birth for use pursuant to KRS 211.645 and 211.647.]~~ All certificates shall be typewritten. No certificate shall be held to be complete and correct that does not supply all items of information called for in this section and in KRS 213.051, or satisfactorily account for their omission except as provided in KRS 199.570(3). If a certificate of birth ~~[-or the hearing risk certificate]~~ is incomplete, the local registrar shall immediately notify the responsible person and require that person to supply the missing items, if that information can be obtained.
- (2) When a birth occurs in an institution or en route thereto, the person in charge of the institution or that person's designated representative, shall obtain the personal data, prepare the certificate, secure the signatures required, and file the certificate as

- directed in subsection (1) of this section or as otherwise directed by the state registrar within the required ten (10) days. The physician or other person in attendance shall provide the medical information required for the certificate and certify to the fact of birth within ten (10) days after the birth. If the physician or other person in attendance does not certify to the fact of birth within the ten (10) day period, the person in charge of the institution shall complete and sign the certificate.
- (3) When a birth occurs in a hospital or en route thereto to a woman who is unmarried, the person in charge of the hospital or that person's designated representative shall immediately before or after the birth of a child, except when the mother or the alleged father is a minor:
- (a) Meet with the mother prior to the release from the hospital;
 - (b) Attempt to ascertain whether the father of the child is available in the hospital, and, if so, to meet with him, if possible;
 - (c) Provide written materials and oral, audio, or video materials about paternity;
 - (d) Provide forms necessary to voluntarily establish paternity;
 - (e) Provide a written and an oral, audio, or video description of the rights and responsibilities, the alternatives to, and the legal consequences of acknowledging paternity;
 - (f) Provide written materials and information concerning genetic paternity testing;
 - (g) Provide an opportunity to speak by telephone or in person with staff who are trained to clarify information and answer questions about paternity establishment;
 - (h) If the parents wish to acknowledge paternity, require the voluntary acknowledgment of paternity obtained through the hospital-based program be signed by both parents and be authenticated by a notary public;
 - (i) Provide the unmarried mother, and, if possible, the father, with the affidavit of

paternity form;

- (j) Upon both the mother's and father's request, help the mother and father in completing the affidavit of paternity form;
- (k) Upon both the mother's and father's request, transmit the affidavit of paternity to the local registrar in the county in which the birth occurred; and
- (l) In the event that the mother or the alleged father is a minor, information set forth in this section shall be provided in accordance with Civil Rule 17.03 of the Kentucky Rules of Civil Procedure.

If the mother or the alleged father is a minor, the paternity determination shall be conducted pursuant to KRS Chapter 406.

- (4) The voluntary acknowledgment-of-paternity forms designated by the Office of Vital Statistics shall be the only documents having the same weight and authority as a judgment of paternity.
- (5) The Cabinet for Health Services shall:
 - (a) Provide to all public and private birthing hospitals in the state written materials and audio or video materials concerning paternity establishment forms necessary to voluntarily acknowledge paternity;
 - (b) Provide copies of a written description and an audio or video description of the rights and responsibilities of acknowledging paternity; and
 - (c) Provide staff training, guidance, and written instructions regarding voluntary acknowledgment of paternity as necessary to operate the hospital-based program.
- (6) When a birth occurs outside an institution, the certificate shall be prepared and filed by one (1) of the following in the indicated order of priority:
 - (a) The physician in attendance at or immediately after the birth; or, in the absence of such a person,
 - (b) Any other person in attendance at or immediately after the birth; or, in the

absence of such a person,

- (c) The father, the mother, or in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred or of the institution to which the child was admitted following the birth.
- (7) No physician, midwife, or other attendant shall refuse to sign or delay the filing of a birth certificate.
- (8) If a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in the Commonwealth, the birth shall be registered in the Commonwealth, and the place where the child is first removed shall be considered the place of birth. If a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in the Commonwealth, the birth shall be registered in the Commonwealth, but the certificate shall show the actual place of birth insofar as can be determined.
- (9) The following provisions shall apply if the mother was married at the time of either conception or birth or anytime between conception and birth:
- (a) If there is no dispute as to paternity, the name of the husband shall be entered on the certificate as the father of the child. The surname of the child shall be any name chosen by the parents; however, if the parents are separated or divorced at the time of the child's birth, the choice of surname rests with the parent who has legal custody following birth.
 - (b) If the mother claims that the father of the child is not her husband and the husband agrees to such a claim and the putative father agrees to the statement, a three (3) way affidavit of paternity may be signed by the respective parties and duly notarized. The state registrar of vital statistics shall enter the name of a nonhusband on the birth certificate as the father and the surname of the child shall be any name chosen by the mother.

- (c) If a question of paternity determination arises which is not resolved under paragraph (b) of this subsection, it shall be settled by the District Court.
- (10) The following provisions shall apply if the mother was not married at the time of either conception or birth or between conception and birth or the marital relationship between the mother and her husband has been interrupted for more than ten (10) months prior to the birth of the child:
- (a) The name of the father shall not be entered on the certificate of birth. The state registrar shall upon acknowledgment of paternity by the father and with consent of the mother pursuant to KRS 213.121, enter the father's name on the certificate. The surname of the child shall be any name chosen by the mother and father. If there is no agreement, the child's surname shall be determined by the parent with legal custody of the child.
- (b) If an affidavit of paternity has been properly completed and the certificate of birth has been filed accordingly, any further modification of the birth certificate regarding the paternity of the child shall require an order from the District Court.
- (c) In any case in which paternity of a child is determined by a court order, the name of the father and surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court.
- (d) In all other cases, the surname of the child shall be any name chosen by the mother.
- (11) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate. In all cases, the maiden name of the gestational mother shall be entered on the certificate.
- (12) Any child whose surname was restricted prior to July 13, 1990, shall be entitled to apply to the state registrar for an amendment of a birth certificate showing as the surname of the child, any surname chosen by the mother or parents as provided

under this section.

- (13) The birth certificate of a child born as a result of artificial insemination shall be completed in accordance with the provisions of this section.
- (14) Each birth certificate filed under this section shall include all Social Security numbers that have been issued to the parents of the child.
- (15) Either of the parents of the child, or other informant, shall attest to the accuracy of the personal data entered on the certificate in time to permit the filing of the certificate within ten (10) days prescribed in subsection (1) of this section.

(16) When a birth certificate is filed for any birth that occurred outside an institution, the Cabinet for Health Services shall forward information regarding the need for an auditory screening for an infant and a list of options available for obtaining an auditory screening for an infant. The list shall include the Commission for Children with Special Health Care Needs, local health departments as established in KRS Chapter 212, hospitals offering obstetric services, alternative birthing centers required to provide an auditory screening under Section 11 of this Act, and licensed audiologists, and shall specify the hearing methods approved by the Early Child Development Authority in accordance with Section 11 of this Act.

Section 28. The following KRS sections are repealed:

199.8984 Child-Care Policy Council.

157.317 Development of statewide Early Childhood Education Program -- Kentucky Early Childhood Advisory Council.

Section 29. As used in subsection (1) of Section 1 of this Act, "early childhood development fund" means the fund with that name created in House Bill 583 of this 2000 Regular Session from a distribution of moneys in the tobacco settlement agreement fund established by KRS 248.654, or created in other legislation of this 2000 Regular Session.

Section 30. This Act may be cited as the Early Childhood Development Act.

AN ACT concerning education.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The School Code is amended by changing Section 27-8.1 as follows:

(105 ILCS 5/27-8.1) (from Ch. 122, par. 27-8.1)

Sec. 27-8.1. Health examinations and immunizations.

(1) In compliance with rules and regulations which the Department of Public Health shall promulgate, and except as hereinafter provided, all children in Illinois shall have a health examination as follows: within one year prior to entering kindergarten or the first grade of any public, private, or parochial elementary school; upon entering the fifth and ninth grades of any public, private, or parochial school; prior to entrance into any public, private, or parochial nursery school; and, irrespective of grade, immediately prior to or upon entrance into any public, private, or parochial school or nursery school, each child shall present proof of having been examined in accordance with this Section and the rules and regulations promulgated hereunder.

A tuberculosis skin test screening shall be included as a required part of each health examination included under this Section if the child resides in an area designated by the

Department of Public Health as having a high incidence of tuberculosis. Additional health examinations of pupils, including eye ~~vision~~ examinations, may be required when deemed necessary by school authorities. Parents are encouraged to have their children undergo eye ~~vision~~ examinations at the same points in time required for health examinations.

(1.5) In compliance with rules adopted by the Department of Public Health and except as otherwise provided in this Section, all children in kindergarten and the second and sixth grades of any public, private, or parochial school shall have a dental examination. Each of these children shall present proof of having been examined by a dentist in accordance with this Section and rules adopted under this Section before May 15th of the school year. If a child in the second or sixth grade fails to present proof by May 15th, the school may hold the child's report card until one of the following occurs: (i) the child presents proof of a completed dental examination or (ii) the child presents proof that a dental examination will take place within 60 days after May 15th. The Department of Public Health shall establish, by rule, a waiver for children who show an undue burden or a lack of access to a dentist. Each public, private, and parochial school must give notice of this dental examination requirement to the parents and guardians of students at least 60 days before May 15th of each school year.

(1.10) Except as otherwise provided in this Section, all children enrolling in kindergarten in a public, private, or

parochial school on or after the effective date of this amendatory Act of the 95th General Assembly and any student enrolling for the first time in a public, private, or parochial school on or after the effective date of this amendatory Act of the 95th General Assembly shall have an eye examination. Each of these children shall present proof of having been examined by a physician licensed to practice medicine in all of its branches or a licensed optometrist within the previous year, in accordance with this Section and rules adopted under this Section, before October 15th of the school year. If the child fails to present proof by October 15th, the school may hold the child's report card until one of the following occurs: (i) the child presents proof of a completed eye examination or (ii) the child presents proof that an eye examination will take place within 60 days after October 15th. The Department of Public Health shall establish, by rule, a waiver for children who show an undue burden or a lack of access to a physician licensed to practice medicine in all of its branches who provides eye examinations or to a licensed optometrist. Each public, private, and parochial school must give notice of this eye examination requirement to the parents and guardians of students in compliance with rules of the Department of Public Health. Nothing in this Section shall be construed to allow a school to exclude a child from attending because of a parent's or guardian's failure to obtain an eye examination for the child.

(2) The Department of Public Health shall promulgate rules and regulations specifying the examinations and procedures that constitute a health examination, which shall include the collection of data relating to obesity, ~~(including at a minimum, date of birth, gender, height, weight, blood pressure, and date of exam)~~, and a dental examination and may recommend by rule that certain additional examinations be performed. The rules and regulations of the Department of Public Health shall specify that a tuberculosis skin test screening shall be included as a required part of each health examination included under this Section if the child resides in an area designated by the Department of Public Health as having a high incidence of tuberculosis. The Department of Public Health shall specify that a diabetes screening as defined by rule shall be included as a required part of each health examination. Diabetes testing is not required.

Physicians licensed to practice medicine in all of its branches, advanced practice nurses who have a written collaborative agreement with a collaborating physician which authorizes them to perform health examinations, or physician assistants who have been delegated the performance of health examinations by their supervising physician shall be responsible for the performance of the health examinations, other than dental examinations, eye examinations, and vision and hearing screening, and shall sign all report forms required by subsection (4) of this Section that pertain to those

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portions of the health examination for which the physician, advanced practice nurse, or physician assistant is responsible. If a registered nurse performs any part of a health examination, then a physician licensed to practice medicine in all of its branches must review and sign all required report forms. Licensed dentists shall perform all dental examinations and shall sign all report forms required by subsection (4) of this Section that pertain to the dental examinations. Physicians licensed to practice medicine in all its branches, or licensed optometrists, shall perform all eye examinations ~~vision exams~~ required by this Section ~~school authorities~~ and shall sign all report forms required by subsection (4) of this Section that pertain to the eye examination. For purposes of this Section, an eye examination shall at a minimum include history, visual acuity, subjective refraction to best visual acuity near and far, internal and external examination, and a glaucoma evaluation, as well as any other tests or observations that in the professional judgment of the doctor are necessary ~~vision exam~~. Vision and hearing screening tests, which shall not be considered examinations as that term is used in this Section, shall be conducted in accordance with rules and regulations of the Department of Public Health, and by individuals whom the Department of Public Health has certified. In these rules and regulations, the Department of Public Health shall require that individuals conducting vision screening tests give a child's parent or

guardian written notification, before the vision screening is conducted, that states, "Vision screening is not a substitute for a complete eye and vision evaluation by an eye doctor. Your child is not required to undergo this vision screening if an optometrist or ophthalmologist has completed and signed a report form indicating that an examination has been administered within the previous 12 months."

(3) Every child shall, at or about the same time as he or she receives a health examination required by subsection (1) of this Section, present to the local school proof of having received such immunizations against preventable communicable diseases as the Department of Public Health shall require by rules and regulations promulgated pursuant to this Section and the Communicable Disease Prevention Act.

(4) The individuals conducting the health examination, ~~or~~ dental examination, or eye examination shall record the fact of having conducted the examination, and such additional information as required, including for a health examination data relating to obesity, ~~(including at a minimum, date of birth, gender, height, weight, blood pressure, and date of exam)~~, on uniform forms which the Department of Public Health and the State Board of Education shall prescribe for statewide use. The examiner shall summarize on the report form any condition that he or she suspects indicates a need for special services, including for a health examination factors relating to obesity. The individuals confirming the administration of

required immunizations shall record as indicated on the form that the immunizations were administered.

(5) If a child does not submit proof of having had either the health examination or the immunization as required, then the child shall be examined or receive the immunization, as the case may be, and present proof by October 15 of the current school year, or by an earlier date of the current school year established by a school district. To establish a date before October 15 of the current school year for the health examination or immunization as required, a school district must give notice of the requirements of this Section 60 days prior to the earlier established date. If for medical reasons one or more of the required immunizations must be given after October 15 of the current school year, or after an earlier established date of the current school year, then the child shall present, by October 15, or by the earlier established date, a schedule for the administration of the immunizations and a statement of the medical reasons causing the delay, both the schedule and the statement being issued by the physician, advanced practice nurse, physician assistant, registered nurse, or local health department that will be responsible for administration of the remaining required immunizations. If a child does not comply by October 15, or by the earlier established date of the current school year, with the requirements of this subsection, then the local school authority shall exclude that child from school until such time as the child presents proof of having had the

health examination as required and presents proof of having received those required immunizations which are medically possible to receive immediately. During a child's exclusion from school for noncompliance with this subsection, the child's parents or legal guardian shall be considered in violation of Section 26-1 and subject to any penalty imposed by Section 26-10. This subsection (5) does not apply to dental examinations and eye examinations.

(6) Every school shall report to the State Board of Education by November 15, in the manner which that agency shall require, the number of children who have received the necessary immunizations and the health examination (other than a dental examination or eye examination) as required, indicating, of those who have not received the immunizations and examination as required, the number of children who are exempt from health examination and immunization requirements on religious or medical grounds as provided in subsection (8). Every school shall report to the State Board of Education by June 30, in the manner that the State Board requires, the number of children who have received the required dental examination, indicating, of those who have not received the required dental examination, the number of children who are exempt from the dental examination on religious grounds as provided in subsection (8) of this Section and the number of children who have received a waiver under subsection (1.5) of this Section. Every school shall report to the State Board of Education by June 30, in the

manner that the State Board requires, the number of children who have received the required eye examination, indicating, of those who have not received the required eye examination, the number of children who are exempt from the eye examination as provided in subsection (8) of this Section, the number of children who have received a waiver under subsection (1.10) of this Section, and the total number of children in noncompliance with the eye examination requirement. This reported information shall be provided to the Department of Public Health by the State Board of Education.

(7) Upon determining that the number of pupils who are required to be in compliance with subsection (5) of this Section is below 90% of the number of pupils enrolled in the school district, 10% of each State aid payment made pursuant to Section 18-8.05 to the school district for such year shall be withheld by the regional superintendent until the number of students in compliance with subsection (5) is the applicable specified percentage or higher.

(8) Parents or legal guardians who object to health, ~~or~~ dental, or eye examinations or any part thereof, or to immunizations, on religious grounds shall not be required to submit their children or wards to the examinations or immunizations to which they so object if such parents or legal guardians present to the appropriate local school authority a signed statement of objection, detailing the grounds for the objection. If the physical condition of the child is such that

any one or more of the immunizing agents should not be administered, the examining physician, advanced practice nurse, or physician assistant responsible for the performance of the health examination shall endorse that fact upon the health examination form. Exempting a child from the health, ~~or~~ dental, or eye examination does not exempt the child from participation in the program of physical education training provided in Sections 27-5 through 27-7 of this Code.

(9) For the purposes of this Section, "nursery schools" means those nursery schools operated by elementary school systems or secondary level school units or institutions of higher learning.

(Source: P.A. 92-703, eff. 7-19-02; 93-504, eff. 1-1-04; 93-530, eff. 1-1-04; 93-946, eff. 7-1-05; 93-966, eff. 1-1-05; revised 12-1-05.)

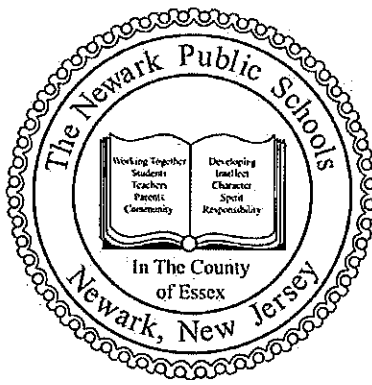
Section 90. The State Mandates Act is amended by adding Section 8.31 as follows:

(30 ILCS 805/8.31 new)

Sec. 8.31. Exempt mandate. Notwithstanding Sections 6 and 8 of this Act, no reimbursement by the State is required for the implementation of any mandate created by this amendatory Act of the 95th General Assembly.

Section 99. Effective date. This Act takes effect January 1, 2008.

SAMPLE FORMS



Newark Board of Education Eye Examination Report

The Newark Board of Education requires that proof of an eye examination by an optometrist or physician (such as an ophthalmologist) who provides eye examinations be submitted to the school no later than October 15 of the year the child is first enrolled or as required by the school for other children. The examination must be completed within one year prior to the first day of the school year the child enters the Newark school system for the first time. The parent of any child who is unable to obtain an examination must submit a waiver form to the school.

Student Name _____

Birth Date _____ (Month/Day/Year) Gender _____ Grade _____

Parent or Guardian _____ (Last) _____ (First)

Phone _____ (Area Code)

Address _____ (Number) _____ (Street) _____ (City) _____ (ZIP Code)

County _____

To Be Completed By Examining Doctor

Case History _____

Date of exam _____

Ocular history: Normal or Positive for _____

Medical history: Normal or Positive for _____

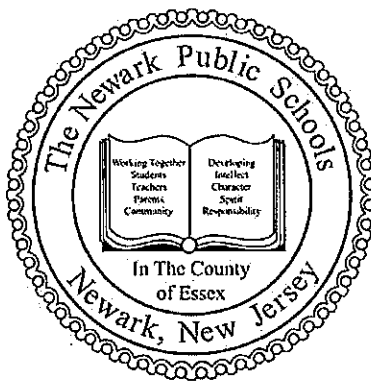
Drug allergies: NKDA or Allergic to _____

Other information _____

Examination

	Distance			Near
	Right	Left	Both	Both
Uncorrected visual acuity	20/	20/	20/	20/
Best corrected visual acuity	20/	20/	20/	20/

250X



Was refraction performed with dilation? Yes No

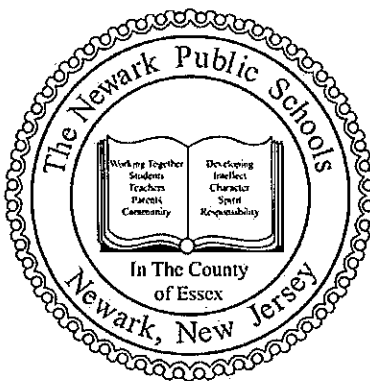
	Normal	Abnormal	Not Able to Assess	Comments
External exam (lids, lashes, cornea, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Internal exam (vitreous, lens, fundus, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Pupillary reflex (pupils)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Binocular function (stereopsis)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Accommodation and vergence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Color vision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Glaucoma evaluation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Oculomotor assessment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

NOTE: "Not Able to Assess" refers to the inability of the child to complete the test, not the inability of the doctor to provide the test.

Diagnosis

Normal Myopia Hyperopia Astigmatism Strabismus Amblyopia

Other _____



Newark Board of Education Eye Examination Report

Recommendations

1. Corrective lenses: No Yes, glasses or contacts should be worn for:
 Constant wear Near vision Far vision
 May be removed for physical education

2. Preferential seating recommended: No Yes

Comments _____

3. Recommend re-examination: 3 months 6 months 12 months

Other _____

4. _____

5. _____

Print name _____

License Number _____

Optometrist or physician (such as an ophthalmologist)
who provided the eye examination MD OD DO

Consent of Parent or Guardian

Address _____

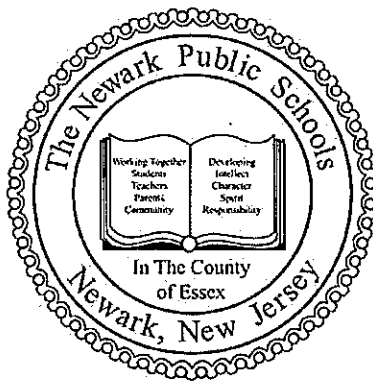
I agree to release the above information on my child or
ward to appropriate school or health authorities.

Parent or Guardian's Signature

Phone _____

Date _____

Signature _____



Newark Board of Education Eye Examination Waiver Form

Please print:

Student Name _____ Birth Date _____
(Last) (First) (Middle Initial) (Month/Day/Year)

School Name _____ Grade Level _____ Gender Male Female

Address _____
(Number) (Street) (City) (ZIP Code)

Phone _____
(Area Code)

Parent or Guardian _____
(Last) (First)

Address of Parent or Guardian _____
(Number) (Street) (City) (ZIP Code)

I am unable to obtain the required vision examination because:

- My child is enrolled in medical assistance but we are unable to find a medical doctor who performs eye examinations or an optometrist in the community who is able to examine my child and accepts medical assistance.
- My child does not have any type of medical or vision/eye care coverage, my child does not qualify for medical assistance, there are no low-cost vision/eye clinics in our community that will see my child, and I have exhausted all other means and do not have sufficient income to provide my child with an eye examination.
- Other undue burden or a lack of access to an optometrist or to a physician who provides eye examinations: _____

Signature _____ Date _____

252x

Newark School Eye Examinations

Information Sheet

- Effective date: [XXX]
- All children enrolling in kindergarten in a public, private, or parochial school and any student enrolling for the first time in a public, private, or parochial school are required to have completed an eye examination before Oct. 15th of their first year in school.
- The eye examination requirement does not apply to children enrolling in preschool.
- Examinations must be performed by a licensed optometrist or medical doctor who performs eye examinations, as specified in New Jersey Division of Consumer Affairs administrative rules. He/she shall complete and sign the Eye Examination Report form, as designated and available on the Newark Board of Education Website Parent Resource Center (<http://www.nps.k12.nj.us/parents/resources/>).
- Before October 15th of the school year, each child to whom the eye examination requirement applies is required to present proof of an eye examination by a licensed optometrist or medical doctor who performs eye examinations, as specified in the New Jersey Division of Consumer Affairs administrative rules.
- The required eye examination must be completed within one year prior to the first day of the school year in which the child enters kindergarten or the child enters the Newark school system for the first time, whether entering a public, private, or parochial school.
- For students attending school programs where grade levels are not assigned, eye examinations must be completed within one year prior to the first day of the school year of the child's first entry into the Newark school system.
- If a child fails to present proof of the required eye examination by {DATE}, the school may withhold the child's report card until:
 - The child presents proof of the required eye examination by submitting a completed Eye Examination Report form.
 - OR
 - The child presents an Eye Examination Waiver form indicating—
 - The child is enrolled in medical assistance but the family is unable to locate in their community a licensed optometrist or a medical doctor who performs eye
 - The child does not have any type of medical or vision/eye care insurance coverage, the child does not qualify for medical assistance there are no low-cost vision/eye clinics in the community that will examine the child, and the family has exhausted all other means and does not have sufficient income to provide the child with an eye examination.
 - Other undue burden or lack of access to a licensed optometrist or medical doctor who performs eye examinations prevents the child from obtaining an eye examination. (Specify.)

OR

- The child presents an exemption based on religious grounds
- Or
- The child presents proof of an appointment for an eye examination scheduled within 60 days after the [INSERT DATE] deadline.
- Every school is required to report to the Newark Board of Education by [INSERT DATE]
 - Number of children with eye examinations completed.
 - Number of children not completing an eye examination (no waiver, no religious exemption, and no approved appointment for an eye examination within 60 days after October 15).
 - Number of children for whom a waiver is submitted due to undue burden or lack of access—
 - Child is enrolled in medical assistance but the family is unable to locate in their community a licensed optometrist or a medical doctor who performs eye examinations to examine the child and who will accept medical assistances.
 - Child does not have any type of medical or vision/eye care coverage, child does not qualify for medical assistance, there are no low-cost vision/eye clinics in the community that will examine the child, and the family has exhausted all other means and does not have sufficient income to provide the child with an eye examination.
 - Other undue burden or lack of access to a licensed optometrist or medical doctor who performs eye examinations. (Specify.)
 - Number of children receiving an exemption based on religious objection.
 - Number of children submitting proof of an appointment for an eye examination scheduled within 60 days after the {DATE} deadline.

STUDIES

CHILDREN'S VISION CARE IN THE 21ST CENTURY & ITS IMPACT ON EDUCATION, LITERACY, SOCIAL ISSUES, & THE WORKPLACE: A CALL TO ACTION

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Abstract

Experts estimate vision problems are prevalent in 25% of all schoolchildren in the United States and are one of the most prevalent handicapping conditions in childhood. However, research has shown, of children in the 9 to 15 years old age group, only 10% who needed eyeglasses actually had them. Children with undiagnosed and untreated vision problems grow up to become adults with undiagnosed and untreated vision problems. The failure to detect and treat children's vision disorders affects the rates of adult criminality, literacy and labor productivity.

Children must have the vision care and vision skills required in order to perform successfully in school and workplace environments. As children progress through their school years they must be checked regularly for vision problems. These screenings or examinations should include multiple tests to identify a wider spectrum of vision problems, especially those affecting near-vision. Parents must be educated on these points so they do not defer vision care for their children. Resources should be provided for those who cannot afford eye exams or glasses for their children, as well as to make it easier for follow through.

Key Words

children's vision care, literacy, school performance

A Literate Population is the Backbone of a Healthy Society

Today, literacy is defined as how people use written information in order to function in society rather than merely basic reading ability. Now, more than ever, adults need a higher level of literacy to function well. Society has become more complex and low-skill jobs are disappearing. Therefore, inadequate levels of literacy among a broad section of the population potentially threatens the strength of economies and the social cohesion of nations.¹

To this end, federal and state governments, educational institutions, businesses, and non-profit organizations are working to improve educational opportunities for children. The proliferation of standardized testing, "No Child Left Behind," and the United States (US) Department of Health and Human Services' Healthy People 2010 are evidence of this. Even so, only a few organizations, outside of those dedicated to eye health and vision examinations are addressing one of the elemental issues affecting literacy today – poor vision in children. Essentially, children with untreated vision problems are left behind before they even start school.²

When Children Do Not Have Good Vision, Their School Performance Suffers

As we work to improve schools and get more books and computers into the hands of children, we must not overlook a prerequisite learning tool – good vision. Simply put, when children do not have good vision, their school performance suffers. Experts estimate that 80% of what we learn comes through the visual processing of information,³⁻⁶ yet two out of three children in the US do not receive

any preventive vision care before entering elementary school.⁷ Vision disorders are the fourth most common disability in the US, and are one of the most prevalent handicapping conditions in childhood.⁸ Once children enter school, the problem only gets worse as approximately 25% of schoolchildren have a vision problem.⁹⁻¹¹ According to the National Parent Teacher Association, more than 10 million children in this country suffer from vision problems that may contribute to poor academic performance.¹²

School districts in disadvantaged areas have statistics that are even more alarming.¹³ Of Title I students in the fifth through eighth grades, and academically and behaviorally at-risk children ages 8 to 18, up to 85% of these children had vision problems that were either undetected or untreated.¹⁴ Children from poor urban areas, many of whom are ethnic minorities, experience more than twice the normal rate of vision problems.¹⁵ Without the proper vision skills, these children will be at risk of dropping out of high school.¹⁶ Teenagers with mediocre high school academic records and low Scholastic Aptitude Test (SAT) scores have been found to have significant undetected or untreated vision problems. They are at risk of not completing their college programs.¹⁷ By any measure, the level of inadequate vision care for children is significant. Moreover, its societal consequences have been linked to high school drop-out rates, social and emotional problems, juvenile delinquency, adult literacy problems, and incarcerations. The impact on workforce quality and productivity is also evident.

Zaba JN. Children's Vision Care In The 21st Century And Its Impact On Education, Literacy, Social Issues, And The Workplace: A Call To Action. *J Behav Optom* 22;2:39-41.

How Vision Problems Are Addressed in Schools

Most parents assume children's vision problems are addressed by schools. As of 2009, nine states do not require children to receive any preventive vision care before starting school or during the school years. Vision screenings are required in 39 states (including the District of Columbia), but 32 states do not require children that fail the screening to receive an eye exam by an eye doctor.¹⁸

When schools conduct vision screenings, in most cases, they only test distance vision, whereas, most classroom activity involves near vision. Reliance upon the Snellen chart, a 150-year-old test, often determines if a child has good eyesight for the classroom. In fact, the Snellen chart is nearly synonymous with good vision for many even though it only tests that a child can clearly see letters 3/8" high from a distance of 20'. That is fine when determining if a child can see the chalkboard at the front of the room, but not if he or she can see well close-up to read a book or view a computer screen.

The deficiencies in school vision screenings would not be so important if most parents did not rely on them to assess their children's vision health. The definition of good vision needs to be updated to reflect the technical requirements of the learning environment of the 21st century and discourage the use of the Snellen chart as the sole arbiter of good vision. In today's society, students entering first grade must be able to write in complete sentences, read independently, and be able to retell and comprehend what they read.¹⁹ More tests need to be added to school screening protocols to detect near-vision problems or other potential vision issues that may hinder a child's ability to read, learn, and perform well in school.

Only about Half of the Children Who Fail Vision Screenings Get the Help They Need

When children are identified with vision problems during school screenings, an estimated 40% to 67% do not receive the recommended follow-up care by a vision care professional.^{20,21} For example, in the state of Arkansas, 45% of the children referred by school nurses for follow-up vision examinations did not receive them.²² In Texas, according to state health officials, 42% did not receive the appropriate follow-up care.²³ A study of 5,851 children, ages 9 to 15 years old, indicated

that nearly 20% needed eyeglasses. However, only 10% of that group had them.²⁴ Therefore, 90% of those children requiring prescriptive eyeglasses were not wearing them.²⁵

Why are these percentages of non-compliance by parents and guardians so high? What are the barriers to vision care for children?

Financial: Many families do not have vision insurance and cannot afford to take their child to see an eye care professional or pay for glasses.²⁶

Logistical: Logistical issues include transportation to the doctor's office and childcare for other family members. Taking time off work, especially when the caretaker works in a low-skilled job for an hourly wage is also a factor.²⁶

Vision care is not a priority: In some cases, families view vision care as an expense that can be deferred. In other cases, parents simply do not believe their child has a vision problem.²⁶

Given the low rate of follow up to school vision screenings and the resulting high number of children in need of eye exams and glasses, is it any wonder "Johnny can't read?"

Consequences of Uncorrected Vision Problems

When vision problems are not detected early, they can negatively affect a child throughout his or her lifetime. Title I students, juvenile offenders, illiterate adults, academically at-risk college students, and academically/behaviorally at-risk public school students have a higher prevalence of undetected vision problems.²⁷ Between 1992 and 2003, there was a decline in the average prose literacy of adults between the ages of 25 and 39.²⁸ A significant number of undetected and untreated vision problems are found in adults in the lowest levels of literacy.²⁹ When evaluating adults with literacy problems, 66% to 74% of the samples failed vision screenings.³⁰ Many of these adults are the children of yesterday who had undiagnosed and untreated vision problems and grew up to become part of the adult literacy problem we face today.³¹

The Link between Undetected and Untreated Vision Problems, Literacy, and Incarceration

Vision problems can lead to inadequate academic performance in school, self-esteem issues with attendant emotional components and, when triggered by other

factors, antisocial behavior.³² In the US, the incarceration of juvenile and adult offenders is continually increasing in numbers and cost. At the beginning of 2008, the total inmate count at state, federal, and local jails in the US stood at 2,319,258. With the number of adults in the US numbering 230 million, the incarceration rate is one in every 99.1 adults.³³

In 2000, previously undetected vision problems were found in populations of adjudicated adolescents, with percentages as high as 74%.³⁴ In a 2003 national assessment of prison inmates, only 43% had obtained a high school diploma or a high school equivalency certification before the start of their incarceration.³⁵ Social and economic problems such as literacy, high school dropout rates, juvenile delinquency, and adult criminality, are complex issues. Even so, vision is often overlooked as a contributing factor, despite overwhelming evidence that it plays a critical role in childhood development and school performance.

Vision Care, Literacy, and Workplace Productivity

Better vision care means a more literate and productive workforce. It has been estimated that "...a 1% rise in literacy scores translates into a 2.5% relative rise in labor productivity and a 1.5% increase in gross domestic product (GDP) per person."³⁶ Today the goal of almost all employers is "high performance workplaces that integrate technology, work process, and organization ... practices that can adapt to changing business conditions."³⁷ To achieve this goal, employers are spending billions of dollars to upgrade the basic skills of many employees. In fact, in 2006, US organizations spent an astounding \$5.8 billion on basic skills such as remedial reading, writing, and math.³⁸ Smaller companies often do not offer basic skills training. The limited literacy skills of employees cost businesses and taxpayers \$20 billion annually in low wages, profits, and productivity.^{38,39} One economist estimates the US "could reduce the number of crimes committed by 100,000 each year and save \$1.4 billion annually, if 1% more males graduated from high school each year."⁴⁰

Healthy vision is vital for a productive and efficient workplace. The US Census Bureau predicts that between 2000 and 2040, the number of Americans aged 65 and over will more than double to 77 million, while the number of prime working age

adults between 25 and 54 will increase by only 12%.⁴¹ Today's children must have the necessary vision skills to perform successfully in school and in the workplace.

CONCLUSION

As children progress through their school years, they must be screened for vision problems. These screenings should include multiple tests to identify a wider spectrum of vision problems especially those affecting near-vision. Parents must be educated on these points so they do not defer vision care for their children. We must provide resources for parents who cannot afford eye exams or glasses for their children and, whenever possible, make it easier for them to follow through. Finally, leaders in business, education, government, health-care, and the non-profit sector must come together to make vision care a priority, including affordable access to prescription eyeglasses for all children. By doing so, we can ensure a more literate society and a strong economic future. It is as simple as connecting the dots:

Better Vision Care for Children



Increased Literacy



Fewer Societal Problems



Stronger Economy.

Acknowledgement

This paper was commissioned by the Essilor Vision Foundation and is reprinted here with permission.

ABOUT THE ESSILOR VISION FOUNDATION

Essilor Vision Foundation is a public charity whose mission is to eliminate poor vision and its lifelong consequences starting with children.

- The Essilor Vision Foundation provides free eye exams and new prescription eyewear through in-school and partnership programs to children who cannot get them otherwise
- The Essilor Vision Foundation educates parents, teachers, caregivers, and community leaders to be aware of the implications of poor vision and watch for signs of vision problems in children

By helping children see clearly today, we give them a better chance of succeeding tomorrow.

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INSIGHTS ON THE EFFICACY OF

VISION EXAMINATIONS & VISION SCREENINGS

FOR CHILDREN FIRST ENTERING SCHOOL

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Abstract

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In the year 2000, a law was passed in Kentucky that mandates an optometric or ophthalmologic examination for all children first entering the public school system. This has provided information that compares the effectiveness of vision screenings and full vision examinations. In 2002, data was collected from optometrists about the visual histories of 2,916 children who presented for mandatory school entrance eye examinations. Of a total of 466 diagnosed vision problems, only 75 (16.09%) had generated referrals for comprehensive eye examinations from the pediatrician or family physician who had examined the child within the past year. This provides significant insight into the limitations of vision screenings for school-aged children. We review the literature on these limitations and conclude that vision screenings should not be the primary mechanism to identify children with vision problems.

Key Words

amblyopia, children, children's vision, family physician, Kentucky, Kentucky Law HB 706, pediatrician, referral, school entrance eye examination, spectacles, strabismus, vision screening.

Introduction

On July 15, 2000, Kentucky Governor Paul Patton signed House Bill No. 706 into law. This legislation requires all children to have "a vision examination by an optometrist or ophthalmologist" before entering the public school system for the first time.¹ Prior to its enactment, the mandated vision requirement for Kentucky's school children was limited to vision screenings performed by their pediatricians or family physicians as part of the required school entrance physical examinations. During the first year of the vision examination law, a survey of 5,316 children who were examined by 43 optometrists showed that 3.4% were diagnosed with amblyopia, 2.31% with strabismus and 13.92% were prescribed spectacle lenses.² If the Kentucky law had not been enacted, it is possible that many of these children would have entered school with vision disorders undetected and untreated.

Kentucky's law has put the spotlight on the debate regarding the most effective way to identify children with vision problems. The American Optometric Association³ and the American Public Health Association⁴ support comprehensive vision examinations for all children in order to identify undiagnosed and treatable vision disorders, such as amblyopia. On the other hand, the American Academy of Ophthalmology⁵ and the American Academy of Pediatricians⁶ favor vision screenings to identify children with vision disorders. These organizations contend

that performing vision exams on all children is expensive and may not identify significantly larger numbers of children with vision problems.

In order to compare the results of both vision screenings and eye examinations in the identification of vision disorders in children, optometrists in Kentucky were asked to provide information about the visual history of children presenting for mandatory eye examinations. The survey attempts to estimate the percentage of Kentucky's school children that would have entered school with an undiagnosed vision problem if HB 706 had not been enacted.

Methods

Ninety optometrists were asked to compile and report the data from school entrance vision examinations completed between June and August 2002. For each examination, the optometrists reported the child's age, whether spectacle lenses were prescribed, and whether the child was diagnosed with amblyopia or strabismus. Additional information was collected from parents (or guardians) about their child's health and visual history. Parents were asked whether their child had received care from a pediatrician or family physician within the past year. If the answer was yes, the parent was asked if a visual problem had been detected. If a problem had been detected, the parent was asked if a referral had been made to an eye care practitioner. Sixty three of the 90 optometrists responded and provided data from 2,916 school entrance vision examinations.

Results

For the reported 2,916 school entrance examinations, 65 children (2.23%) were diagnosed with amblyopia, 58 children (1.99%) were diagnosed with strabismus, and 343 children (11.76%) were prescribed spectacles. Because some children had multiple diagnoses, a total of 362 children (12.41%) with visual problems were identified. Table 1 presents the number of diagnoses for each age group and compares the data from the present survey to the data obtained in 2000.

Of the children diagnosed with vision problems, 56 (86%) of the amblyopes, 46 (80%) of the strabismics, and 288 (84%) of those requiring a lens prescription had visited a pediatrician or family physician at least once within the past year, prior to receiving the eye examination required under Kentucky law. Thus, a high percentage of these children had received some form of medical care during the prior year. See Table 2.

However, only 11 (19.64%) of the amblyopes, 12 (26.09%) of the strabismics and 52 (18.05%) of those requiring a lens prescription were referred by the pediatrician or family physician to an eye care practitioner for an eye examination. See Table 2.

Therefore, of a total of 466 diagnosed vision problems, only 75 (16.09%) had generated referrals for vision examinations prior to receiving Kentucky's mandated vision examination. Consequently, if only vision screenings had been required, approximately 58 of the 362 children with vision problems would have been referred. If every referral had resulted in a comprehensive vision examination, then approximately 304 children (10.4% of our total sample of 2,916 children) would still have entered school with undiagnosed vision problems.

Discussion

The prevalence rates of amblyopia and strabismus in children have been reported to range from 1.0% to 4.8%.⁷ The results of the 2000 and 2002 studies both confirm that schoolchildren in Kentucky present normal prevalence rates for these conditions. In both studies, more than 11% of the children entering the school system were prescribed spectacle lenses. The percentage of children with refractive conditions needing correction has been estimated at between 15 and 30%.⁸

**Table 1.
Kentucky Eye Exam Law
2000 and 2002 Diagnostic Results Comparison**

AGE	# of EXAMS		AMBLYOPIA		STRABISMUS		LENS RX	
	2000	2002	2000	2002	2000	2002	2000	2002
3 y.o.	632	686	13 (2.06%)	9 (1.31%)	20 (3.16%)	13 (1.90%)	68 (10.76%)	65 (9.48%)
4 y.o.	1504	1059	50 (3.32%)	31 (2.93%)	40 (2.66%)	26 (2.46%)	173 (11.5%)	127 (11.99%)
5 y.o.	2071	1066	69 (3.33%)	21 (1.97%)	38 (1.83%)	17 (1.59%)	274 (13.23%)	135 (12.66%)
≥6 y.o. *	1109	105	49 (4.42%)	4 (3.81%)	25 (2.25%)	2 (1.90%)	225 (20.29%)	16 (15.24%)
TOTAL	5316	2916	181 (3.40%)	65 (2.23%)	123 (2.31%)	58 (1.99%)	740 (13.92%)	343 (11.76%)

* In 2000, all children entering school for the first time were required to have a vision examination, regardless of age. In 2002, the law was amended to require exams only for 3-6 year olds.

**Table 2.
Referral Rates for Children who had Visited a Pediatrician/Family
Physician in the Past Year**

AGE	AMBLYOPIA			STRABISMUS			LENS RX		
	# DX	Visited MD	Referred by MD	# DX	Visited MD	Referred by MD	# DX	Visited MD	Referred by MD
3 y.o.	9	7	1 (14.29%)	13	11	2 (18.18%)	65	54	6 (11.11%)
4 y.o.	31	29	5 (17.24%)	26	20	4 (20.00%)	127	102	18 (17.65%)
5 y.o.	21	17	4 (23.53%)	17	13	6 (46.15%)	135	119	24 (20.17%)
6 y.o.	4	3	1 (33.33%)	2	2	0 (0.00%)	16	13	4 (30.77%)
TOTAL	65	56	11 (19.64%)	58	46	12 (26.09%)	343	288	52 (18.06%)

In the present (2002) survey, the additional information quantifying the number of referrals generated by pediatricians and family physicians provides significant insight into the limitations of vision screenings for youngsters entering school for the first time. Approximately 14% of the children with diagnosed vision disorders had not visited a pediatrician or family physician within the past year. Thus, there was no opportunity for the children's vision to be assessed.

Further, for the approximately 84% who had visited the pediatrician or family doctor, there is the possibility that vision might not have been evaluated. In a study of 102 pediatric practices in 23 states, it was estimated that vision screenings were attempted on just 66% of children aged 3-5 years. In the same study, vision screenings were not even attempted on 3 year olds.⁹ Efforts to improve screening rates have met with limited success. For example, in one study of pediatric practices, six months after receiving training

in performing vision screenings, there was no significant increase in the screening of 4 and 5 year olds. Although the frequency of screening 3 year olds did improve, 60% of these practices reported that they still screened "none" or "almost none" of their 3-year-old patients.¹⁰

Even if the pediatrician had performed an age appropriate vision screening, vision screenings fail to identify all children with vision problems. Studies of vision screenings have found that between a low of 1%¹¹ to a high of 11%¹²⁻¹⁴ of children that pass a screening actually have a vision problem requiring treatment. In addition, "the fact that screening procedures are non-diagnostic and therefore in no way indicate if treatment will be required is an illusory concept at best for the general public."¹⁵ At least some parents assume that because their child has passed a vision screening, there is no vision problem. Their children do not receive the comprehensive examination that is required to separate the "true negatives" from the

2/1/03

"false negatives" (or underreferrals). As a result, the "false negatives" are not receiving appropriate care because they participated in a screening program.¹⁶

In the present study approximately 19% of the children with vision problems were referred for a vision examination. Perhaps some of these children had even participated in vision screenings in other settings. However, vision screenings suffer from poor compliance with recommendations after a failed vision screening. The ultimate success of any screening program is judged by the use of diagnostic services and compliance with treatment protocols by patients with a positive screening result. Two studies published by the American Academy of Ophthalmology found that 40-67% of children who fail a vision screening do not receive the recommended follow-up care.^{17,18} One cause of poor compliance is poor communication with parents who may or may not be present at the vision screening. One study found that two months later, 50% of parents were unaware that their child had even failed a vision screening.⁹ As a result of these limitations, there can be significant delays in identification and treatment of vision problems. According to one study, when a 5 or 6 year old failed a vision screening, the average delay before evaluation by an eyecare professional was 4.1 years.¹⁹ Because delays in diagnosis and treatment may result in permanent vision loss, these high error and poor compliance rates are quite alarming.

Economics are often used to justify vision screenings as the best system to reliably detect most vision problems at a much lower cost than providing vision examinations for all children. Certainly, if one considers only the direct costs of services, then a vision screening is far less expensive than a comprehensive vision examination. However, in order to be valid, all indirect as well as direct costs associated with each procedure must be included in the comparison. Given the large number of vision disorders that are missed by vision screenings, the indirect costs are likely substantial, if not incalculable. How can the negative impact of an undiagnosed vision problem on the academic performance and quality of life of these children be calculated?

Conclusions

According to the US Department of Health and Human Services, the eco-

nomics impact of visual disorders and disabilities on the US economy was more than \$38.4 billion in 1995.²⁰ Amblyopia has been reported as the leading cause of vision loss in the 20-70-year-old age group.²¹ Delayed diagnosis and treatment of vision problems, including amblyopia, can lead to vision loss, the need for more costly and prolonged treatment, and ultimately loss of productivity. As a result, high error and poor compliance rates inherent in vision screening programs contribute to the economic impact that vision disorders place on our society.

In January 2002, President Bush signed the No Child Left Behind Act into law.²² At the foundation of this legislation is the understanding that the American school system had become a two-tiered system—"similar to apartheid."²³ If we are to eliminate the two-tiered system, then we must diagnose and treat vision disorders before America's children enter school to allow every child to take full advantage of their educational opportunities. Research with at-risk students,²⁴ Title I students,²⁵ adjudicated delinquents,²⁶ and literacy problems²⁷ has documented significant numbers of students with either undiagnosed or untreated vision problems. In many ways these children have already been left behind.

Vision screenings certainly play an important role in identifying visual dysfunctions in a variety of settings. However, our data strongly indicates that, in the case of youngsters entering school for the first time, vision screenings can identify some youngsters with visual dysfunctions, but can miss a significant number of others. The children in this latter group are effectively left behind before they start.

Portions of this article have been taken directly or paraphrased from a Special Report entitled "Pediatric Eye Exams: Needed or Not?" This unpublished report was produced by First Vision Media Group in conjunction with the Vision Council of America. These groups have given permission for us to use these portions. The Special Report can be obtained by contacting vca@visionsite.org.

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EDITORIAL continued

Another factor that contributed to the success of this meeting was at least equally important. It was the attendees. The term "electricity" was used by a number of people to describe the ambience that prevailed. The audiences were firmly attentive to the speakers; people were leaning forward in their seats to be closer to the presenters, and sat back only to take notes. I perceived that people were there not solely for the continuing education credits, but more for the education itself. While the sense of family that has always been a hallmark of COVD's annual meetings prevailed, it had a different aura; people attended not only for the social aspect, but to seriously conduct the family business of learning about and legitimizing the various components of functional optometry. This was particularly impressive to a number of optometric students with whom I spoke.

The officers and staff of COVD should be recognized for conducting a meeting that exceeded most expectations.

REGIONAL CLINICAL SEMINARS RCS

These two-day, single subject seminars are presented in a one speaker and one topic format. The RCS focuses on current topics of interest to practitioners. These seminars have received critical acclaim for their quality in both presentation and speakers. Topics and speakers are:

- Achieving Efficient Information Processing, W.C. Maples, O.D.
- Adult Strabismus and Amblyopia, Gary Etting, O.D.
- Autism Spectrum Disorders, Patricia M. Lemer, M.Ed.
- Behavioral Evaluation of the Low Vision Patient, Paul B. Freeman, O.D.
- Behavioral Optometry and Occupational Therapy: An Integrated Approach, Lynn Hellerstein, O.D. & Beth Fishman, O.T.R.
- Clinical Evaluation and Training Procedures, Robert Sanet, O.D.
- Developmental Considerations of Strabismus in the Infant, Curtis Baxstrom, O.D.
- Diagnosis & Management of Information Processing Dysfunction, Ronald Bateman, O.D. and Roger Dowis, O.D.
- Enhancing Visual Performance, Robert Sanet, O.D.
- Evaluating Visual Performance, Robert Sanet, O.D.
- Evaluation, Assessment and Treatment of Special Needs Patients, Carol Marusich, O.D.
- Holism in Behavioral Optometry, Abe Shapiro, O.D.
- How Vision Governs Thinking & Movement, Jeffrey Getzell, O.D.
- Integrative Treatment Approach for Patients with TBI, Stroke, Sensory Integration Dysfunction, or Learning Disabilities, Lynn Hellerstein, O.D. & Beth Fishman, O.T.R.
- Key to Achievement in School and Life, Albert Sutton, O.D.
- Kinesthetic Reeducation and Vision Therapy, Ingrid Bacci, Ph.D.
- Learning Throughout Life: The Role of Vision, Albert Sutton, O.D.
- Multi-Disciplinary Diagnosis and Treatment of Learning-Related Visual Disorders, Patricia M. Lemer, M.Ed.
- Neurobiology, Education and Optometry: Considerations for the Developmental Optometrist, Steven Ingersoll, O.D.
- Nutrition and Vision, Garry Kappel, O.D.
- Optometric Evaluation of the Infant, Glen Steele, O.D.
- Optometric Management of the TBI Patient, Irwin Suchoff, O.D.
- Optometric Diagnosis and Management of Reversals, Irwin Suchoff, O.D.
- Optometric Perceptual Screening Battery, Irwin Suchoff, O.D.
- Perception: More Than the Sum of Its Parts, Nancy Torgerson, O.D.
- Prescribing Lenses and Prisms, John Streff, O.D.
- Programming the Visual Training and Case Control for the Underachieving Child, J. Baxter Swartwout, O.D. & Katie Ring Swartwout
- Vision Therapy for All Ages: Building Your VT Patient Base, Anne Barber, O.D.
- Vision Therapy: Expanding the Primary Care Practice, Lynn Hellerstein, O.D. & Beth Fishman, O.T.R.
- Visual Information Processing: Removing the Mystique, Roger Dowis, O.D.

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Eye Exams for Children: Their Impact and Cost Effectiveness

Prepared by Abt Associates for the Vision Council of America

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Executive Summary

Acknowledgements

We are grateful for the contributions made by the expert panel that advised us on the study. This panel included Alex Kemper M.D., M.P.H., M.S; William Reynolds O.D.; James Tielsch Ph.D., M.H.S.; and Joel Zaba, M.A., O.D.

The panel provided general guidance on the structure of the model, suggestions about relevant articles to include in our literature review, gave input as to the values of model inputs, and reviewed the Final Report.

We also wish to thank Paulette Schmidt O.D., M.S. and Susan Taub M.D., F.A.C.S. for the articles that they furnished to us.

This report was prepared by:

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The author of the report is Alan J. White, Ph.D.

Executive Summary

Comprehensive eye exams and vision screenings are two methods used to detect amblyopia and other visual disorders in children. Eye exams are performed by an ophthalmologist or optometrist and are used to diagnose vision problems. Vision screenings are conducted by non-medical volunteers, nurses and pediatricians and used to identify people at risk for vision problems.

The goal of the study was to estimate the impact and cost effectiveness of providing comprehensive eye exams to all preschool-age children. We compared the universal provision of eye exams to two interventions: (1) a system in which all preschool-age children receive a vision screening and (2) the eye care that would be provided to children even without the presence of a formal vision screening or eye exam program.

Results

(1) Eye exams would detect, treat and cure significantly more cases of amblyopia in children than a universal vision screening program or the “usual patterns of care” that would exist without a formal vision screening program in place.

It is estimated that nearly 100,000 four-year-olds in America have amblyopia. Even without a formal vision screening system in place, many of these children would have their vision problems identified and treated as part of the usual health care they receive.

However, replacing a system that relies on “usual care” with one that provides universal eye exams would result in 51 percent more children receiving successful treatment for amblyopia by age 10. The following table compares the effectiveness of universal eye exams to “usual care”:

Percent of amblyopia cases...	Universal Eye Exams	Usual Care	Percent Gain
Receiving treatment by age 10	98%	77%	27%
Receiving successful treatment by age 10	68%	45%	51%

Universal eye exams would also outperform a program of universal vision screenings and successfully treat 33,000 (144 percent) more children with amblyopia. The table below compares the effectiveness of universal eye exam and universal vision screening programs:

Cases of amblyopia...	Universal Eye Exams	Universal Screenings	Difference	Percent Gain
Detected in initial visit	94,171	64,433	29,738	46%
Receiving treatment	75,337	30,928	44,409	143%
Successfully treated/cured	56,503	23,196	33,307	144%

(2) A universal comprehensive eye exam program would be highly cost effective and produce a greater return on investment than many other health care interventions.

Our measure of cost effectiveness is based on a comparison of the costs of these interventions against the improvement in outcomes (quality/length of life) they generate. Cost effectiveness is measured in QALYs (quality-adjusted life-years), a unit that expresses the additional costs required to generate one year of perfect health (1 QALY).

There are no universally accepted standards, but if an intervention costs less than \$50,000 per QALY it is generally considered cost effective; if it costs less than \$20,000 per QALY, it is generally considered highly cost effective. Assigning a QALY value to different interventions allows policymakers and providers to prioritize and focus on interventions that give the greatest return at the lowest cost.

Replacing a system of “usual care” with universal preschool-age eye exams was highly cost effective at a cost of \$12,985 per QALY. Universal eye exams were also highly cost effective when compared to universal vision screenings at cost of \$18,390 per QALY. The table at right provides QALY values of other common medical interventions (ophthalmic interventions in **bold**.)

Background

Amblyopia affects up to five percent of the population and is the leading cause of unilateral vision loss among those aged 20 to 70. The consequences of untreated amblyopia may include blindness, problems with school performance and effects on quality of life. A number of previous studies have found that early detection of amblyopia provides the best opportunity for effective treatment.

Comprehensive eye exams are considered by all eye care professionals to be the “gold standard” for detecting amblyopia and other vision problems in children. Several studies also suggest that eye exams are more effective than vision screenings in terms of ensuring appropriate treatment for amblyopia. However, they are more costly to perform than vision screenings.

A recent study suggests that vision screening, even when performed by pediatric eye specialists, identifies only about three-fourths of children with amblyopia.

QALY values for selected medical procedures	
Intervention	Cost/QALY†
Liver transplantation	\$350,000
Central retinal artery occlusion (paracentesis)	\$345,000
Annual retinopathy screening for 45-y.o. diabetes patient	\$231,000
Photodynamic AMD therapy (20/200 vision)	\$174,000
Elective repeat cesarean birth	\$120,000
Lung transplantation	\$120,000
Photodynamic AMD therapy (20/40 vision)	\$87,000
PVR eye surgery	\$80,000
Dual-side air bags	\$76,000
Diabetes screening (all individuals 25+ y.o.)	\$67,000
ESRD treatment, including dialysis and transplants	\$67,000
Hepatitis A vaccination (vs. no vaccination)	\$54,000
Heart transplantation (vs. optimal treatment).	\$51,000
Annual retinopathy screening for 45-y.o. diabetes patient	\$44,000
Chemotherapy (for 60 y.o. woman with breast cancer)	\$41,000
One-time screening for depression (for 40 y.o.)	\$35,000
Driver-side air bags	\$30,000
Typical school-based tobacco prevention program.	\$22,000
Breast cancer screening vs. no screening for 70-75 y.o. women	\$21,000
Cochlear implant for deaf individual	\$20,000
Hypertension screening (for asymptomatic 60 y.o. woman)	\$19,000
Universal eye exams for children vs. universal screening	\$18,930
Universal eye exams for children vs. "usual care"	\$12,985
Bone marrow transplantation	\$11,000
Universal cancer screening program (vs. no screening)	\$5,200
Cataract surgery	\$4,500
†In 2002 dollars. The source for many values is the Harvard Center for Risk Analyses, Harvard School of Public Health, Comprehensive Table of Cost Utility Ratios, 1976-2001, www.hsph.harvard.edu/cearegistry	

It is almost certain that vision screening tests given by non-eye care professionals are less effective. In addition, several studies suggest that many children who fail a vision screening do not receive the appropriate follow-up evaluation and care.

As a result of the performance differences between exams and screenings, some children who receive comprehensive eye exams are likely to have amblyopia identified and treated earlier than if they had received a vision screening.

Methodology

Our goal was to determine if the benefits resulting from exams' higher rates of detection and treatment offset their higher costs. By understanding the costs and likely benefits, one can better evaluate the level of resources society should devote towards promoting eye exams for all preschool children.

We assessed the cost effectiveness by using cost-utility analysis. This is a method of economic evaluation that analyzes the cost effectiveness of interventions by comparing the benefits of a medical intervention (in this case, eye exams) to the costs of providing that intervention (in this case, both examination and treatment expenses).

Our cost-utility analysis is measured in QALYs (quality-adjusted life-year), a unit that expresses the additional costs required to generate a year of perfect health. A QALY takes into account both quantity and the quality of life generated by intervention being studied and provides a common unit of measurement by which a wide range of medical interventions can be compared.

Because comparisons of cost-effectiveness can be made among interventions, cost-utility analysis means that priorities can be established based on those interventions that are inexpensive (low cost per QALY) and those that are expensive (high cost per QALY). An intervention is generally considered cost effective if it costs less than \$50,000 per QALY and generally considered highly cost effective if costs less than \$20,000 per QALY.

The economic model we developed to compare these interventions focuses on amblyopia. This is the only vision disorder typically identified during comprehensive exams/vision screenings for which there was sufficient information in the medical literature. Given an initial prevalence of amblyopia in the study population, the model takes into account the following:

- (1) The relative performance of comprehensive exams and vision screenings;
- (2) The probability that treatment is successful;
- (3) The costs of exams, screenings, and treatment;
- (4) The utility values associated with healthy vision, amblyopia, and amblyopia-caused bilateral impairment;
- (5) Patterns of treatment under usual eye care.

To estimate model parameters, we conducted an extensive literature review and also consulted with the panel of experts who advised us on the study. While there is an extensive literature on amblyopia and other visual disorders, there are significant gaps that affect our ability to precisely measure

several key model parameters and differences across relevant studies in their estimates of model parameters.

For example, little data has been published on the relative performance of comprehensive exams and vision screenings, the costs and outcomes associated with treating amblyopia, or the impact of untreated amblyopia on quality of life. We developed a set of base values that represent our best estimates, but these are subject to uncertainty given the range of values found in the literature.

Sensitivity analyses were used to examine how results change using different values of model parameters. We found that changes in the values of most model parameters had marginal impact on the basic conclusions of the report. However, results were particularly sensitive to assumptions made about the quality of life associated with untreated amblyopia, prevalence, and the probability of successful treatment.

Conclusion

The study's conclusions are largely driven by the fact that treatment of amblyopia is extremely cost effective. While data are limited, we estimate that treating amblyopia (not including detection) costs about \$1,800 per QALY. As a result, spending additional dollars on interventions that detect and treat large numbers of children with amblyopia are also highly cost effective.

That a vision screening costs less to perform than an eye exam is not the only relevant factor in assessing cost effectiveness. What is relevant is a comparison of the costs and the benefits associated with each procedure. Based on our evaluation, the higher costs associated with eye exams are more than offset by the gains that result from the additional children who are successfully treated as a result of receiving an eye exam.

In conclusion, it was beyond the scope of this study to address issues related to the feasibility of requiring comprehensive eye exams for preschool children. However, the study suggests that policymakers should give consideration to programs that would increase the number and proportion of preschool children who receive a comprehensive eye exam from an eye care professional.

These gaps in our knowledge illustrate the clear need for further research on amblyopia and other visual disorders in order to refine estimates of model parameters, allowing for more precise estimates of the costs and benefits of comprehensive exams.

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March 21, 2017

Ms. Rebecca Sapp, Executive Director
Joint Committee on the Public Schools
41 West State Street, Suite 2F
Trenton, NJ 08625

Dear Ms. Sapp:

Thank you for inviting me to testify before the Joint Committee on the Public Schools on March 22, 2017.

I will attend the session but will defer public testimony to other colleagues. Attached please find testimony that Dr. G. Kennedy Green and I offered before the Joint Committee on the Public Schools on January 17, the Assembly Education Committee on January 18 and the Senate Select Education Committee on February 14, 2017.

Please be aware that I remain available to provide any other assistance that you may need.

Sincerely,

A handwritten signature in black ink, appearing to be "PJF", written over a horizontal line.

Patrick J. Fletcher
Superintendent of Schools

PJF/mh
Enclosures

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Joint Committee on Public Schools

School Funding Testimony

March 22, 2017

Patrick Fletcher

River Dell Regional Schools Superintendent

Thank you for the opportunity to testify on this important matter. Please be aware that I testified before the Joint Committee on Public Schools on January 17, the Assembly Education Committee on January 18 and the Senate Select Education Committee on February 14, 2017 with my colleague Dr. Kennedy Greene. We submitted twenty-five pages of data on January 17 that I will summarize in the interest of time.

Background

In 2008, the New Jersey Legislature enacted a new school funding formula called the School Funding Reform Act (SFRA). The SFRA was thoroughly vetted by the judiciary and found to be constitutional.

The formula delivers extra funding to school districts based on the number of economically disadvantaged students, limited English proficient students, and students with disabilities enrolled in the district.

The SFRA has never been fully funded. This chronic underfunding affects districts of all enrollment sizes, all income ranges, and all geographic regions. In short, every public school district in New Jersey is affected.

While it is true that total educational funding has increased, a large percentage of that aid is devoted to non-instructional expenses like pension payments, social security, and debt service, thus limiting direct aid to the classroom.

This underfunding forces unfair decisions at the local level to meet ever-increasing statutory and regulatory mandates.

These decisions combined with growing income disparities negatively impact students' readiness to learn. As a result, student achievement stagnates, with pockets of improvement dependent upon where a child lives.

Districts are forced to look for efficiencies in their budgets, which is a good thing. However, there is a limit to the ability to find those efficiencies.

In addition, state underfunding coupled with the 2% tax cap prevents districts from addressing increased costs due to wages, benefits, special education, etc.

After many years of underfunding, many districts have reached that limit and are forced to cannibalize existing programs.

In short, the cost curve is exceeding the revenue curve.

Solutions

While complex, the issue of school funding can be broken into smaller more manageable problems.

Problem One: Inequitable Distribution

Approximately \$600 million of existing funding is devoted to adjustment or hold harmless aid. These funds were carved out of the SFRA pot in 2009 to allow districts who would experience a decline in aid to adjust to the new formula.

Unfortunately, this aid continues to this day and has the result of overfunding some districts at the expense of others.

These funds should be carefully relocated over a phase-in period. This would not require one cent of additional revenue from the state.

Problem Two: Underfunding

As stated before, the SFRA, was legislatively derived and deemed constitutional by the judiciary.

It is underfunded by \$1 to \$1.4 billion in the current budget.

On an annual basis, the state calculates the amount of aid necessary to fund the special populations – special needs students, English Language Learners, economically disadvantaged children, and those who live remotely or travel hazardous routes to school.

The state should choose one of those categories per year over the next five years and phase in the aid to local districts. This would allow the state to identify additional revenue to support the expenses.

In conclusion, I firmly believe that this issue can be fairly addressed if we only put aside our differences and focus on the will to do so.

Thank you