



# The New Jersey Coalition for Special Education Funding Reform

## COMMENTS ON PROPOSED FISCAL ACCOUNTABILITY RULES (N.J.A.C. 6A: 23A) AS THEY PERTAIN TO SPECIAL EDUCATION

*Public Hearing: June 10, 2009*

Good evening. I am Brenda Considine, Chairperson of the New Jersey Coalition for Special Education Funding Reform. We are a broad-based group comprised of major statewide special education advocacy organizations. Our members include The Arc of New Jersey; Autism New Jersey (formerly COSAC); The Alliance for the Betterment of Citizens with Disabilities; The Association for Children of New Jersey; ASAH (formerly the Association of Schools and Agencies for the Handicapped); The Education Law Center; Disability Rights New Jersey (formerly New Jersey Protection and Advocacy); and SPAN, The Statewide Parent Advocacy Network, and the Special Education Leadership Council. The Rutgers Law Clinic and the New Jersey Special Education Practitioners have also supported our advocacy work.

As you may know, special education parents and other advocates, including the Coalition and its members, actively opposed many of the provisions of the draft rules currently in effect. In response to this opposition, the New Jersey Assembly Education Committee held a three-and-a-half-hour roundtable discussion on this topic in February, only to be followed two months later by a five-hour hearing of the Joint Committee on Public Schools. At both meetings, lawmakers and leaders from the Department listened as parents and advocates shared concerns about the code adopted on an emergency basis last December.

Our comments are organized around those areas we support, areas we continue to oppose, and areas in which we believe the code fails to include provisions in CORE.

### **The new language proposed by the Department addresses some, but not all, of our concerns.**

I would like to begin by offering our support for new language in Section 2.3 concerning the establishment or expansion of public regional providers. We support the new focus on administrative services. The Coalition had previously opposed this section because further expansion and development of special education services in public regional programs is in direct conflict with the Department's efforts to increase placements in local programs. We support this change, with the understanding that the term "administrative services" refers to the services described at 2.3(b)(4) and (5).

We support new language in Section 2.7, which describes the role of the Executive County Superintendent, or ECS, in coordinating special education services. We applaud the language that focuses referrals to services and programs in local school districts. This important distinction will help advance the Department's efforts to build local capacity, and will help ensure that special education services are delivered, to the maximum extent possible, in settings with typical students. We support this change.

We also appreciate the proposed elimination of language that would allow the ECS to refer IEP teams to *public regional programs* if no programs in local districts could be identified. The Coalition had opposed this provision because it would fuel further growth of non-local district programs at a time when the Department is trying to encourage placements in less restrictive settings with typical students, and because it created an uneven playing field among non-local providers offering similarly restrictive programs.

All of these changes, though subtle, reflect an effort to better align this code with the Department's stated goal of maximizing in-district placements. We commend the Department and thank them for responding to the concerns expressed by thousands of parents and advocates in this area.

**There are, however, several major areas around which we remain deeply concerned:**

First, we remain solidly opposed to rules at 2.7 (3)(i)-(iv) that *require* the IEP team to notify the ECS each time they are considering an out-of-district placement. This provision is not required by CORE and is overly prescriptive.

As required by CORE, the ECS should be a referral source for the IEP team, but teams should not be forced to seek a referral or contact the ECS. In addition, any referral database should include a full range of supports and services to foster in-class support for teachers and students. Such supports and services could come from any provider, including local districts, approved clinics, approved private schools, and public regional programs. The referral database should be accessible by all members of the IEP team, including the parent.

Second, while we support efforts to better understand reasons for out-of-district placements, we remain strongly opposed to language requiring local districts to write a letter of explanation to the ECS each time they place a student in a program other than one identified by the ECS.

Review of placement patterns should be based on aggregate data and trends, not on a student-by-student basis. This level of direct oversight around individual student placements undermines the IDEA-mandated IEP team decision-making process, and diminishes the professional role of psychologists, teachers, social workers, and others. And, since ECS's have considerable power over local spending, IEP teams will be pressured to accept their referrals, even if they do not believe the program suggested by the ECS is appropriate.

With nearly 23,000 students with disabilities in New Jersey placed by local districts in out-of-district programs, this provision has the potential to cause violations in IDEA time-line requirements, and drive up local district costs associated with meeting time and legal fees.

And third, we oppose the rule that allows the ECS to recommend that certain out-of-district students be returned to district, or that certain class sizes are maximized. Issues around program (i.e. class size) and placement are required under federal law to be made individually by the IEP team. The ESC is not a member of the IEP team and therefore, has no role in such decisions.

**There is important language from the CORE bill that is NOT in the rules and should be made a part of the rules.**

First, the CORE bill requires that the ECS 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. This vital provision is not mentioned in the rules but is central to building local capacity. The goal is not simply LRE, but rather, LRE in local programs that are appropriate and have the capacity to serve students effectively.

Second, CORE requires the ECS to report on a regular basis to the Commissioner on progress in achieving the goal of increasing the number of special education students educated in appropriate programs with non-disabled peers. This vital provision is also not mentioned in the rules and should be added to underscore its importance.

Thank you for this opportunity to share our views with you tonight.

Brenda Considine  
For the Coalition for Special Education Funding Reform