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Special Education Advisory Council
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Dr. Paul Ban, Director
Student Support Services Branch
637 18th Avenue, Building C, Room 101-B
Honolulu, HI 96816

Dear Dr. Ban:

The Special Education Advisory Council (SEAC) has as one of its responsibilities under the Individuals with Disabilities Education Act to comment publicly on proposed rules and regulations regarding the education of children with disabilities. The Office of Special Education Programs has finalized its regulations regarding the 2004 IDEA Amendments, and we understand from conversations with you that Hawaii's Department of Education intends to mirror these regulations in its revisions to our administrative rules regarding special education--Chapter 56.

The Council has taken the position in previous correspondence with OSEP that some of the new language of the IDEA regulations needs to be expanded or changed in order to maintain protections to students and families that are in our current version of Chapter 56. In the following list of recommendations, we have cited the current section in the IDEA 2004 regulations, indicated our suggestion for revision and offered a rationale for our decisions.

Definitions

§300.8 Child with a disability

Recommendation: Remove the sentence in §300.8(c)(4)(ii) that reads "The term does not apply to children who are socially maladjusted unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section."

Rationale: The term "socially maladjusted" is not defined, and there is no research to support a definition for this term. As it stands, it causes confusion and may limit services to students with mental illnesses.



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§300.169 State Advisory Panel

Recommendation: Reinstate the requirement that one of the duties of the Panel is to “(f) Advise the SEA on eligible students with disabilities in adult prisons.”

Rationale: The Council believes that it is important to continue to focus on the educational needs of these adult students who are eligible for services under IDEA.

Additional Procedures for Evaluating Children with Specific Learning Disabilities

§300.307 Specific Learning Disabilities

Recommendation: Under §300.307(a) clarify that the use of Response to Intervention (RTI) or other research based procedures for determining whether a child has a specific learning disability must conform to the same eligibility timeline as for other disability determinations (i.e., sixty days).

Rationale: The implementation of new procedures to determine eligibility must not unnecessarily delay access to specially designed instruction and related services and the protections of IDEA.

Individualized Education Programs

§300.320 Definition of an Individualized Education Program

Recommendation #1: Under §300.320(2) add a section (iii) stating that “nothing in this section shall prohibit the IEP Team from including benchmarks or short-term objectives for children with disabilities who are not taking alternate assessments.”

Rationale: Short-term objectives or benchmarks provide a mechanism for showing how progress toward meeting annual goals will be measured and reported. The IEP team should have the option of choosing to use short-term objectives and benchmarks, if appropriate, for any child.

Recommendation #2: Under §300.320(3)(ii) the regulations should state clearly that periodic progress reports must be provided at least quarterly.

Rationale: The wording of the proposed regulations merely suggests options, and students with disabilities could receive progress reports as infrequently as twice a year. Semester reporting would not provide adequate information and accountability about the success or failure of particular strategies and interventions intended to address the student’s unique educational needs.

SUBPART E: PROCEDURAL SAFEGUARDS

§300.501 Opportunity to examine records; parent participation in meetings



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§300.501 Opportunity to examine records; parent participation in meetings (cont.)

Recommendation: Reinstate current language by adding to 300.501(c): “(5) The public agency shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness or other significant hearing loss, or whose native language is other than English.”

Rationale: Parents cannot be expected to participate effectively without the necessary supports.

§300.520 (b) Transfer of Rights at Age of Majority

Recommendation: Provide for an alternative mechanism to Court appointed guardianship to maintain a parent’s legal right to make decisions for a student 18 or over who is unable to make informed educational decisions due to his or her disability.

Rationale: The current regulations deny parents (of students unable to make informed decisions because of the extent of their disability) access to meaningful participation in the IEP or curtail a parent’s due process rights once their child reaches the age of majority, if the parent is unable or unwilling to obtain legal guardianship. Legal guardianship is costly, time-consuming and not viewed as best practice in the field of developmental disabilities where less restrictive means of providing oversight and protection are available.

§300.536 Change of placement because of disciplinary removals.

Recommendation: Remove §300.536 (2) (ii) from the determination that disciplinary removals for more than 10 cumulative days constitute a change of placement.

Rationale: This new requirement that “a child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals” before a series of removals totalling more than 10 days in a school year be considered a change of placement is more restrictive than previous language. A student could be subjected to removals for more than 10 days in a school year without the protections of a manifestation determination and IEP team action.

Thank you for this opportunity to provide comment on possible revisions to Chapter 56.

Sincerely,

Ivalee Sinclair
Chair