

MINUTES OF THE COMMISSION ON SPECIAL EDUCATION ACCESS AND EQUITY

Tuesday, March 18, 2014

Low House Office Building
Baltimore County Delegation Room 180
Annapolis, Maryland 21401

The Commission on Special Education Access and Equity held its fourth regular meeting on Tuesday, March 18, 2014, at 1 p.m., at the Low House Office Building in Annapolis, Maryland. The following Commission members were in attendance: Marcella E. Franczkowski, Chair; Marie Cordi Brayman; Ellen A. Callegary; George Failla, Jr.; Tomi Fabri; Dorie Flynn; Sandra French; Chabre Hall; Kalman Hettleman; Stephanie Livesay; The Honorable Eric G. Luedtke; Leslie Seid Margolis; The Honorable Karen S. Montgomery; Theresa Parham; The Honorable Paul J. Pinsky; B. Gigi Ayeh-Robertson; Denise O. Shaffer; The Honorable Alonzo T. Washington; and Janet Wilson. The members in attendance comprised a quorum.

The following staff to the Commission were in attendance: Donna Riley, Branch Chief for Policy and Accountability; and Rosemary King Johnston, Consultant, Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS). Dori Wilson, Branch Chief for Family Support and Dispute Resolution, and Elliott Schoen, Deputy Counsel, Office of the Attorney General were also in attendance. Public attendees were: Julie Reiley, Susan Carle, Amy Maloney, Michael McLaughlin, Karen Smith, and Barbara Krupiarz.

WELCOME

As the Chair, Ms. Franczkowski opened the meeting at 1:15 p.m. Following introductions of the Commission members and recognition of their service and commitment to students with disabilities and their families, Ms. Franczkowski explained the location change to Annapolis to accommodate Commission members during the current Legislative Session. She thanked Delegate Washington and his staff for arranging the meeting space.

APPROVAL OF MINUTES

Ms. Franczkowski called for review of the Commission Minutes for Thursday, January 16, 2014. A motion to approve the minutes was made and seconded. The minutes were unanimously approved.

DISCUSSION, REVIEW, AND APPROVAL OF REVISED RECOMMENDATION FOR TOPIC I-PROCEDURAL SAFEGUARDS

Ms. King Johnston facilitated the review of the proposed revised recommendation as requested by the Commissioners at the January meeting. The proposed recommendation reads:

1. Local School Systems (LSS) will utilize a variety of methods to share procedural safeguards with families/parents/guardians and students, as appropriate. Procedural safeguards will be provided **AT LEAST ANNUALLY AND AT THE PARENTS REQUEST.**

The methods used to share the procedural safeguards may include and are not limited to:

- Meeting individually with families/parents/guardians/ and students, as appropriate, to identify and utilizing their preferred method(s) of receiving/communicating/sharing information about procedural safeguards;
- Utilizing a video presentation of procedural safeguards;
- Convening 1 to 1 meetings/presentations to share procedural safeguards;
- Providing summaries of the procedural safeguards document;
- Providing a reference sheet of procedural safeguards (“Cheat Sheet”); and
- Sharing the procedural safeguards specific to the topic of the IEP team meeting.

The recommendation was unanimously approved as revised.

DISCUSSION, REVIEW, AND APPROVAL OF PROPOSED RECOMMENDATION FOR TOPIC II-IDENTIFYING AND ELIMINATING DISPARITIES

Ms. Franczkowski restated that at the last meeting, the Commissioners agreed to the formation of a small workgroup of members to develop a recommendation for review by the full Commission. She then thanked Ms. Margolis, Ms. Ayeh-Robertson, Ms. Beck, Ms. Callegary, Ms. Mason, Mr. Failla, and Mr. Hettleman for their work and opened the floor for discussion of the proposed recommendation.

The proposed recommendation reads as:

“The Commission recommends that MSDE convene a workgroup comprised of general and special educators, parents, advocates, and experts knowledgeable about racial, ethnic, gender, economic, and disability disproportionality as they affect students with disabilities with respect to the following issues:

- a) Discipline
- b) Achievement
- c) Graduation, including attendance, truancy, and dropout rates
- d) Identification of disability
- e) Placement into special education, including type of special education program
- f) Access to advanced placement and other high-level courses
- g) Other relevant aspects of education

The workgroup shall review and analyze available data and using that data, shall identify both short-time and longer term priorities to address any identified disparities for students in Maryland, and shall propose recommendations to MSDE to resolve the disparities. The workgroup shall be convened no later than July 1, 2014 and the work shall be completed and the report drafted by December 31, 2014. A copy of the workgroup’s report of priorities and recommendations to MSDE shall be provided to the Maryland General Assembly when the Legislature convenes in January 2015.”

Members of the workgroup presented their proposal and the rationale for the components of the proposal.

Ms. King Johnston facilitated the discussion. A number of friendly amendments were presented and the Commissioners agreed to amend the proposed recommendation to include “socio-economic factors/status”, to consider “student mobility rate”, and to include “overrepresentation and underrepresentation” as part of the identification, placement, and access discussion.

Additional discussion about the proposed workgroup included questions regarding the availability of data, sources for data, not limiting discussions of socio-economic factors to FARMS data only, consideration of the level of parent education and its potential impact on services.

DISCUSSION OF TOPIC III-CONCERNS ABOUT EQUITY BETWEEN THE PARTIES IN SPECIAL EDUCATION DUE PROCESS HEARINGS AND POTENTIAL METHODS FOR IMPROVING THE PROCESS

Ms. Franczkowski shared information and guided the Commissioners through the data provided prior to the meeting and in meeting packets to help inform the discussion. She opened the floor for discussion. Robust discussion followed with members providing insight and inquiries regarding subjects and issues related to Topic III. There was discussion regarding utilization of the MSDE/DSE/EIS website data that reports three or, in some instances, four years of data regarding due process and state complaints. Questions were asked about possible reasons for and trends in local school systems declining to mediate. Ms. Wilson explained how to further analyze the reported data.

Comments were made, questions were asked, and discussion followed on these topics:

1. There is a 90% prevailing rate for Local School Systems (LSS) in Due Process hearings.
2. Is the Due Process system “stacked” in favor of LSSs?
3. Are there policy recommendations that could be made to shift the Burden of Proof to LSS and increase opportunities for less adversarial resolution?
4. Does data from other states that have shifted the Burden of Proof support that it has made a difference in Due Process hearings?
5. Data from New York and New Jersey show that since they shifted the Burden of Proof both the rate and cost of Due Process hearings has declined.
6. Does the Supreme Court ruling regarding Burden of Proof allow LSSs to make decisions regarding who will bear the Burden of Proof?
7. Are LSS meeting their obligations to provide data and documents to families who are preparing for Due Process?
8. Are there policy actions that can be taken to disallow youth from being summarily put out of school and alternatives/options for these youth and their families?
9. Has Due Process become more “legal” and adversarial?
10. It is difficult for families to navigate the system without legal assistance and there are three areas that should be considered:
 - Attorneys are hard to find at low cost
 - Education experts are necessary and cost prohibitive (could we recommend a policy change that would provide state/local funding for reimbursement of expert testimony?)
 - Will the Burden of Proof bill currently being heard in the Legislature change the access/equity in Due Process for those who get past the first two “hurdles”?
11. Are IEP teams amenable to family requests within the IDEA?
12. Is there a willingness or not to try newer or different ideas for inclusion in the IEP?
13. Are there policy changes that could encourage the building of relationships among parties as one way to level the playing field in developing and implementing IEPs and resolving disputes?
14. Is Special Education funding appropriate?
15. Is Thornton providing the funding for equitable, adequate services to children with disabilities and their families?
16. Is there a good faith effort to provide services described under IDEA that are cost effective, in the LRE, and avoid the need for Due Process actions?

17. If there is intimidation of families by LSSs in the development and implementation of IEPs and in filing for Due Process, MSDE should be informed so an investigation can be done and the issues addressed.

At the conclusion of this discussion, the Chair received agreement from the Commission to move to recommendations at the next meeting.

At this time, Ms. Franczkowski invited the legislative members of the Commission to make comments. In addition to the recommendations at the next meeting, the legislators asked that the next meeting should also address professional development, teacher preparation, caseload, workload, paperwork, teacher vacancies and shortages, and teacher recruitment and retention. There were also comments characterizing teaching “as a profession under siege and the underfunding of education as a consequence of the recession.” Also, the need for educators to have access to the resources necessary to effectively and fully implement IEPs, increase per pupil funding, and to consider dedicating gambling revenue for education.

Ms. Franczkowski thanked everyone for the honest discussion, policy suggestions, and again encouraged the members to come to the April meeting with proposals for the consideration of the full Commission. Ms. Flynn indicated that she will have a proposal for the April meeting.

PUBLIC COMMENT

The following five (5) individuals provided public comment:

Julie Reiley
Barbara Krupiarz
Susan Carle
Michael McLaughlin
Karen Smith

REMINDER OF NEXT MEETING

The Commission will hold its next regular meeting on Wednesday, April 16, 2014, from 1:00 p.m. to 3:30 p.m., at the Johns Hopkins University (JHU) Center for Technology in Education (CTE), 6740 Alexander Bell Drive, Columbia, Maryland 21046.

ADJOURNMENT

With no further business, Ms. Franczkowski adjourned the meeting at 3:40 p.m.

Respectfully submitted:
Marcella E. Franczkowski
Chair

Date:
