

**MINUTES OF THE COMMISSION ON SPECIAL EDUCATION ACCESS AND EQUITY  
for April 16, 2014**

Johns Hopkins University School of Education  
Center for Technology in Education  
6740 Alexander Bell Drive, Columbia, Maryland 21045

The Commission on Special Education Access and Equity held its fifth regular meeting on Wednesday, April 16, 2014, at 1 p.m., at the Center for Technology in Education in Columbia, Maryland. The following Commission members were in attendance: Marcella E. Franczkowski, *Chair*; B. Gigi Ayeh-Robertson; Carol Beck; Marie Brayman; Tomi Fabri; Dorie Flynn; Sandra H. French; Chabre V. Hall; Kalman R. Hettleman; Stephanie E. Livesay; The Honorable Eric G. Luedtke; Leslie Margolis; Gwendolyn J. Mason; The Honorable Karen S. Montgomery; Theresa Parham; The Honorable Paul J. Pinsky; Denise O. Shaffer; and Janet Wilson (via phone). Members in attendance comprised a quorum.

The following staff to the Committee were present: Elliott Schoen, Legal Counsel, Maryland State Department of Education (MSDE), Donna Riley, Branch Chief for Policy and Accountability, MSDE, Division of Special Education/Early Intervention Services (DSE/EIS); Sheréa M. Makle, Communications Specialist, DSE/EIS; Dori Wilson, Branch Chief for Family Support and Dispute Resolution, DSE/EIS, and Rosemary King Johnston, Consultant.

Public attendees were: Wayne Steedman; Tiffany Johnson; Amy Caloney; Josie Thomas; Kelly Meissner; Mike McLaughlin; Jeanne Taylor; and Cheryl A. McLoad, and staff from the Maryland Department of Disabilities (via phone) for George Failla.

**WELCOME**

Ms. Franczkowski opened the meeting at 1:05 p.m. Commission members, staff, and public attendees were welcomed and thanked for their support of children with disabilities and their families. All attendees briefly introduced themselves. Ms. King-Johnston shared that Commission member Ellen Callegary could not be in attendance but sent Wayne Steedman to provide comments on her behalf during the public comment period.

**APPROVAL OF MINUTES**

Ms. Franczkowski called for review of the Commission Minutes for Tuesday, March 18, 2014. A motion to approve the minutes was made and seconded. The minutes were unanimously approved with the following amendment: any written testimony presented as public comment at the end of the meeting will be included as an attachment to the minutes.

**DISCUSSION AND REVIEW OF TOPIC III RECOMMENDATIONS – EQUITY BETWEEN THE PARTIES IN SPECIAL EDUCATION DUE PROCESS HEARINGS AND POTENTIAL METHODS FOR IMPROVING THE PROCESS**

Ms. Franczkowski reminded the Commission members that the Commission would follow Robert's Rules of Order. Ms. Franczkowski then opened the floor for discussion of proposed recommendations.

Ms. King Johnston facilitated review and discussion of proposed recommendations, which were either submitted electronically prior to the meeting or provided in paper copy at the start of the meeting. Recommendations resulted from discussion and public comments provided at the January 16 and March 18 Commission meetings.

Proposed recommendations for Topic III read as follows:

1. “That the state establish a system of publicly funded special education advocates for low income parents who otherwise could not be able to afford representation at mediation and due process hearings.”
2. “That the state consider setting statutory or regulatory caps on the caseload of special educators, school psychologists, and pupil personnel workers.”
3. “That the state, in re-evaluating the Thornton funding formulas, consider substantially increasing state special education funding in recognition of the increasing costs of providing special education services in schools.”
4. “That the state establish under the Attorney General’s Office or another appropriately independent body an Office of the Special Education Ombudsman who could independently evaluate complaints regarding special education services.”
5. “Trust is basic to all good relationships. As Maryland is a leader in education, our insistence on improving the school system’s response to parents can be another positive step forward for Maryland. The number one predictor of student success is a positive relationship between school and community. This Commission calls for a greater emphasis on the role of parents as a valued and integral part of the IEP team. In our shared efforts to improve education for all students, school systems must view parents as an equal member (partner).”
6. “Proposed Maryland Parental Consent Regulation: COMAR 13A.05.01.13?
  - A. Parental consent.
    1. Required parental consent. Informed parental consent is required before:
      - a. An initial eligibility determination or any changes in categorical identification;
      - b. Any revision to the child’s IEP services or placement;
      - c. Any partial or complete termination of special education and related services, except for graduation with a standard or advance studies diploma;
      - d. Inclusion of any provision involving seclusion or restraint in a child’s IEP.
    2. The Maryland State Department of Education provides for an impartial special education due process hearing system to resolve disputes between parents and local educational agencies with respect to any matter relating to the:
      1. Identification of a child with a disability;
      2. Evaluation of a child with a disability (including disagreements regarding payment for an independent educational evaluation);
      3. Educational placement and services of the child; and
      4. Provision of a free appropriate public education to the child.”

The Commission discussed the recommendations, and offered insight and inquiries for consideration, including:

1. How will the Commission define “low-income” for eligibility criteria within its recommendation to establish a publicly funded network of attorneys for families to access for representation? What income eligibility criteria will be considered to ensure greater equity for families in poverty, and families who do not meet low-income or poverty level criteria, but are unable to afford quality legal representation?
2. Does the recommendation take into account that many families who are not considered low-income lack the means to afford legal representation due to household obligations?
3. In what percentage of the cases resolved prior to due process did legal counsel represent the families and were the families happy with not going to due process? Ms. Wilson shared that the MSDE analyzes local school system data to determine the percentage of cases in which due process was not further pursued.
4. In what percentage of the 90% prevailing rate for local school systems in due process hearings did legal counsel or family advocate represent the families? Ms. Wilson explained that the MSDE had not collected or analyzed such data from local school systems. In addition, Ms. Wilson reminded the

Commission that in Maryland, non-attorney advocates may provide support but cannot provide legal representation to families in due process.

5. Senator Pinsky made a request to open the floor to representatives of local school systems regarding the impact of the recommendation to establish a system of publicly funded advocates. The Chair agreed and opened the floor to Commission members and participants representing local school systems.
6. Ms. Mason (Montgomery County Public Schools) and Ms. Wilson (Garrett County Public Schools) expressed concern regarding the impact on public school funding and the increased burden on local school systems. Ms. Mason suggested the options of partnership expansions with local law schools or allocating federal funds for such a system of services.
7. Ms. Margolis explained that area universities lack the funding needed to expand pro bono services and are therefore not able to expand partnerships and take on additional cases.
8. Ms. Flynn expressed that military families have a difficult time even though they may not meet low-income eligibility criteria, and that regardless of a family's income, there needs to be a level playing field for due process.
9. Mr. Hettelman expressed concern that a recommendation such as this has a high fiscal note that will impede its consideration by the General Assembly.
10. Senator Pinsky expressed a concern with establishing a "cottage industry" of attorneys paid with public funds to represent families in due process hearing. Ms. French commented that a public proposal process with an unbiased review component should be considered.
11. Ms. Livesay expressed that with Topic I and Topic II recommendations helping to ensure equal access and equity, this recommendation may be impacted.

As discussion continued, Ms. Franczkowski and Ms. King-Johnston requested, and received agreement from the Commission, to move further deliberation of Topic III to the end of the meeting. However, Commission members expressed concern that neither the meeting agenda or legislative timeline should be prioritized over vigorous examination of identified issues. Senator Pinsky stated that even with further discussion, he would not support moving the recommendation forward.

#### **PANEL PRESENTATION AND DISCUSSION OF TOPIC IV – EFFECTS OF WORKLOAD, CASELOAD, AND PAPERWORK REQUIREMENTS**

Ms. Franczkowski framed the topic by defining the terms "workload," "caseload," and "paperwork" and identifying the various staff positions involved in and impacted by each, including: support personnel, administrators, general educators, specialized educators, para-educators, instructional assistants, and related service providers.

Dr. Wilson, representing the Public School Superintendents' Association of Maryland, expressed that while teachers are focused on and responsible for caseload and paperwork, they are also focused on, and passionate about, student diagnosis and prescriptive IEP goals, growth, progress, and achievement. Paperwork is compliance-focused. The shift to results driven accountability must be considered when discussing workload, caseload, and paperwork.

Ms. Mason, representing public school administrators and employees, expressed that the level of accountability for caseload and workload has magnified significantly over the past several decades. In addition to the responsibilities of educating student with disabilities, special educators work across the disciplines of general education and special education and are involved in all content areas. The significant variance in the disability populations served by special educators will present a challenge for any caseload recommendations by the Commission.

Ms. Parham, representing public school employees, expressed how her drive and passion for teaching have been impacted by paperwork and caseload requirements, after 34 years in the profession. On average, 16-20 hours each week (65% of the entire school year), are dedicated to completing paperwork, contacting parents, connecting with other educators to stay compliant with law and the LSS requirements. Now with educators using the Charlotte Danielson standard additional work and mandates have been added. Administrative and secretarial support is non-existent because of funding challenges. Without relief, the provision of FAPE is at risk, highly qualified educators will move away from the field of special education and universities will see declining enrollment in education programs. The State should consider separating the job of special education teacher and caseload manager, so that educators can focus on providing instruction to students with special needs.

Ms. Hall, representing the Maryland Speech-Language Hearing Association, informally surveyed staff she encounters in Harford County Public Schools regarding the impact of workload, caseload and paperwork. Anecdotal responses regarding the impact on instruction were clustered as “3Ps”— paperwork processes, procedures, and parent involvement. Suggestions include increasing allotted planning time and differentiating between service provision and administrative caseload, consider a method for working with families electronically, (e.g., via smart phones).

Ms. Livesay, representing school psychologists expressed that school psychologists may be the most underutilized service providers in local school systems. Across the State there is little equity for access to psychological services. A study of individualized education programs (IEPs) in local school systems to see how many students in the district have school psychological services will reveal that for systems where available psychological services are maxed out, students are not prescribed psychological services on the IEP. As you decrease caseloads in a school, you are able to increase the depth of the service delivery, or the “hit rate.” Each time a student with an IEP is seen by a school psychologist, progress notes are required. School psychologists are also required to comply with and participate in system initiatives, school improvement team planning, crisis intervention, including suicide prevention, mental health services provision. The rise of stress in public school employees due to caseload and paperwork is extremely high. Without changes, dedicated professionals will leave or avoid the field.

Ms. Fabri, in her 39th year as a special educator, representing the Maryland State Educators’ Association, expressed the vast differences in the delivery of services to students with disabilities now versus the years involving self-contained settings. The responsibilities are tremendous. In addition to education responsibilities, educators also have other school building assignments, including bus duty before and after school. Special educators are also on every major committee. There are “double” requirements for modified assessments, remediation programs, professional development, and co-planning/co-teaching with general educators. Time and money are major issues. One suggestion is for school teams to try as much as possible to hold all IEP meetings on the same day of the week for routine and management. Administrative staff support is needed for every school special education department.

Ms. Ayeh-Robertson, a general educator who teaches inclusion classes, concluded the panel presentation. She expressed that tracking of student progress is a compounded issue because it is based on varied content areas, goals, and objectives. One suggestion would be development of a uniformed “goals bank” from which educators could pull to indicate progress. Additionally, with the new Common Core Standards, knowing and understanding multiple content areas place enormous burden on special educators. Local school systems should provide needed professional development, instead of making it the sole responsibility of the educator to attain additional education and training. Paperwork, caseload, workload requirements are major factors in educator burn out. Educators need to be compensated for using personal time to complete school requirements. In addition, with the number of policy changes initiated by the MSDE, the Department might consider a procedure whereby policy changes are introduced all at once, and only one time during the school year.

Ms. Franczkowski thanked the panelist for their presentations and opened the floor for discussion. Discussion followed, with the following points highlighted:

1. Teachers need access to **administrative** /clerical support, smaller caseloads, someone to handle caseload responsibilities. What can a LSS do to offset some of the burden? Staffing budget would need to be increased significantly.
2. Floater or substitute pools may be recommended for related service providers who are required to make up services on a student's IEP missed due to provider's absence.
3. General educators provide approximately 80% of IEP services in the inclusive setting. Thus, additional professional development opportunities must be considered, as well as more intensive training at the collegiate level to prepare general educators to educate students with disabilities.
4. Excellent school-based caseload management is critical to engaging families in their child's education.
5. The Code of Maryland Regulation (COMAR) now requires that Universal Design for Learning (UDL) be imbedded in instruction and assessment for all students. The impact on educators is tremendous, and the need for extensive professional development is great.
6. Differentiated authority exists among the State and all local school systems. Therefore, issues such as a local school system's assignment of a special educator to school building duties (e.g., bus duty, hall monitoring), are not appropriate considerations for this State Commission.
7. The legislation for this Commission requires that a fiscal note/cost estimate be provided for any recommendation made by the Commission.

#### **PUBLIC COMMENT**

The following two individuals provided public comment:

- Jeanne Taylor (written comments attached)
- Wayne Steedman (written comments not provided)

#### **REMINDER OF NEXT MEETING**

The Commission will hold its sixth and final meeting on Friday, June 13, 2014, at the Johns Hopkins University, Center for Technology in Education, 6740 Alexander Bell Drive, Columbia, Maryland 21046. At the request of the Commission, the Chair has agreed to amend the meeting time to 12:00-3:30 pm., to allow additional time for deliberation of recommendations. The Chair agreed that the Commission members would be sent an electronic copy of draft minutes for today's meeting within the next few business days. A compilation of proposed recommendations and notes will be emailed to Commission members within the next few business days. The MSDE may conduct an electronic survey of Commission members regarding the proposed recommendations. If conducted, survey results would be emailed in a timely manner to Commission members. A first draft of the Commission report will be provided in advance of the next meeting.

#### **ADJOURNMENT**

With no further business, the meeting adjourned the meeting at 3:30 pm.

Respectfully submitted:  
Marcella E. Franczkowski  
Chair  
Date: June 5, 2014  
Approval Date: \_\_\_\_\_