DRAFT

STATE ADVISORY COUNCIL ON THE EDUCATION OF CHILDREN WITH DISABILITIES

June 15, 2007
Carmel Educational Service Center
Indianapolis, IN

ADVISORY COUNCIL MEMBERS PRESENT:

B. Marra, G. Bates, R. Burden, D. Downer, C. Endres, K. Farrell, C. Lawrence for D. Geeslin, J. Hammond, M. Johnson, R. Kirby, B. Kirk, K. Mears, J. Nally, M. Ramos, C. Shearer, and S. Tilden.

ADVISORY COUNCIL MEMBERS NOT PRESENT:

S. Beasley, C. H. Hansen, B. Henson, B. Lewis, D. Schmidt, J. Swaim, J. Swiss, and T. Wyatt.

DEPARTMENT OF EDUCATION (DEL) STAFF PRESENT:

B. Alyea, K. Bassett, N. Brahm, S. Knoth, Tara Rinehart, and S. Scudder.

GUESTS:

Dr. Susan Albrecht (Virtual Special Education Cooperative/Ball State University), Esther Baird (Imagine Schools), Alexandra Curlin (Geo Foundation), Misty Achles Dumos (LHA), Dana Johnson (Geo Foundation), Dee Kempson (IDOE), Hale Kile (21st Century Charter School), Nicole McIntosh (21st Century Charter School), Guy Platter (Imagine MASTer Academy), Lori Stainhiser (Renaissance Academy), and Kimb Stewart (IDOE/Charter Schools).

VISITORS:

Debbie Harmon (ISHA), Bonnie Hertzog (ISHA), Margaret Jones (Parent), Kathryn Lee (ICRC), Loui Lord Nelson (RAISE Inc.), and Patricia Pierce (NISEC).

INTERPRETER:

Amy Evans

MEETING

K. Farrell opened the meeting at 8:46 a.m.

MINUTES

The minutes from the June 1, 2007, meeting were read and the Council approved the minutes with no amendments.

BUSINESS

Virtual Charter Schools presentation
Dr. Susan Albrecht presented on the proposed changes to the Virtual Special Education Cooperative. Dr. Albrecht introduced Guy Platter and Esther Baird regarding the new Fort Wayne MASTer Academy.

Fort Wayne MASTer Academy represented by G. Platter. G. Platter gave an overview of Fort Wayne MASTer Academy.

J. Hammond requested additional information regarding how the Academy would provide services to special education students and to explain processes in place for transition planning for these students. G. Platter indicated that the Academy is a K-5 school presently and will top at grade eight. E. Baird indicated that there are currently 400 students enrolled in the Academy with the hope of having 500 students altogether. Currently there are 35 students who have a disability (the large majority being students with a communication disorder). There are a few students with a learning disability and one with other health impairment as well. K. Farrell asked for details regarding how special education services would be provided to the Academy and whether the Academy would be contracting with the Virtual Cooperative. Dr. Albrecht explained the services that the Cooperative would provide to the Academy. B. Kirk asked about parents' participation/involvement in the Academy. G. Platter indicated that he has met with parents of special education students and explained that the Academy expects a high level of communication with parents and family members throughout the community. C. Endres asked Dr. Albrecht to clarify the "Virtual" aspect of the Virtual Cooperative. Dr. Albrecht emphasized that the virtual part is that they rely on technology to communicate with staff and families throughout the state. Dr. Albrecht emphasized that it is real people who provide services to the students enrolled in the various charter schools. K. Mears asked for clarification with regards to hiring of special education staff members and service providers. Dr. Albrecht indicated that the school hires the day-to-day personnel that work with the student (teachers, paraprofessionals, etc.). Dr. Albrecht hires the low incidence and related service providers (i.e., speech and language pathologists and occupational therapists); however, the Virtual Cooperative partners with the school to find these individuals.

J. Hammond moved to approve the request for the Imagine MASTer Academy joining with the Virtual Cooperative. Seconded by S. Tilden. Motion carried.

L. Stainhiser from the Renaissance Academy in LaPorte, stated that the Renaissance Academy used to be a private school. As a new charter school serving students in grade K-8 will be opening this year under a new service arrangement. Renaissance Academy is a Montessori-based school and currently there are six students with IEPs on their enrollment. S. Tilden asked about the staffing of the special education students. L. Stainhiser explained that the school is in the process of hiring the necessary special education personnel. K. Farrell asked what types of disabilities are represented. L. Stainhiser explained that most of the students are LD or CD and that they have one student with Aspergers on their waiting list.

R. Kirby moved to accept the request for the Renaissance Academy joining with the Virtual Cooperative. Seconded by K. Mears. Motion carried.

M. Achles-Dumos represented the Monument Lighthouse School in Indianapolis. The school will have 335 students enrolled. There are 17 students enrolled currently who have an identified disability. B. Kirk asked about parental involvement for parents of children with special needs. M. Achles-Dumos indicated that there will be a parent representative on the GEI team and that the Monument Lighthouse School will be soliciting additional parent involvement in July 2007. A question was posed by several Council members as to how large is too large for the Virtual Cooperative. Dr. Albrecht responded that the Virtual Cooperative is very comfortable working with the current capacity (including the new charter schools entering the Cooperative today).

R. Kirby moved to accept the request for the Monument Lighthouse School joining with the Virtual Cooperative. Seconded by J. Hammond. Motion carried.

Dr. Albrecht explained that G. John Aytekin was unable to attend due to a trip that could not be rescheduled so she would be presenting on behalf of the Indiana Math and Science Academy. Dr. Albrecht indicated that the Indiana Math and Science Academy will enroll students in grades 6 to 8. She provided an overview of the Indiana Math and Science Academy and stated that they are currently in the process of accepting enrollments so the exact number of pupils is unknown at this time (as is the number of anticipated students who may have an identified disability). C. Endres inquired about the Virtual Cooperative's ability to provide for a more involved special education student, one who may have extensive needs. Dr. Albrecht indicated that the schools are required to provide an assurance that they will provide for whatever needs are necessary to provide a FAPE for that particular student. Dr. Albrecht emphasized that charter schools are public schools and there is a "zero reject" policy. She would like to believe that all schools are ethical and embrace and model that process with the families who come before them.

R. Kirby moved to accept the request for the Indiana Math and Science Academy joining with the Virtual Cooperative. Seconded by K. Mears. Motion carried.

G. Bates addressed the Council with a concern regarding routine and regular updates from the Virtual Cooperative. He stated that when the initial approval for the Virtual Cooperative was made it was with the stipulation that the Council would receive an annual update. This has not occurred and we just added over 1,000 students to the Cooperative's responsibility. B. Marra asked for clarification regarding what the Council would expect the Cooperative to present annually. SAC would like to have Child Count data, litigations, what has happened regarding parent involvement, exiting data for students who max out of the grades served by each charter and overall parent satisfaction with the services at the school as well as the process for a smooth exit/transition. C. Endres stated that it would be helpful to hear what has actually occurred since what we heard today is what each school (and the Cooperative) believes will happen over this next school year. B. Marra stated that it is highly likely that Ball State will add more schools this next school year. He will ensure that the next time the Virtual Cooperative presents to the Council he will advise the Director that the Council wants an update of all services provided by the Virtual Cooperative thus far as well as an overview of how services will be provided to the schools and students who are seeking to join the Cooperative.

Charter School Service Center Special Education Cooperative

The 21st Century Schools and the GEO Foundation presented to the Council. The proposal is for the 21st Century Schools to leave the Virtual Cooperative and create a new Charter School Service Center Special Education Cooperative. Dana Johnson presented and introduced several staff members. D. Johnson brought forth the revised Joint Service and Supply Agreement based on the questions the Council asked at the last meeting. Appendix A of the Plan addressed the actual student counts in the schools which will become a part of this new Cooperative. Because the charter schools are in metropolitan areas D. Johnson feels very comfortable in their potential to locate and hire licensed staff to work with students with exceptional learning needs who come to them. R. Kirby asked about the contractual services referenced in the proposal. D. Johnson indicated that these are the contractual service providers that are currently being paid for by Ball State University and the Virtual Cooperative but once approved by the Council, the Charter School Service Center Special Education Cooperative will pay for the service and the contract will be under their jurisdiction. The continuity of service providers will remain the same but the contract will be with the new Cooperative. J. Hammond asked about the influence of the GEO Foundation. D. Johnson explained that the GEO Foundation's main focus is for parents to understand their choices regarding schools. D. Johnson indicated that each charter school is a separate entity from the GEO Foundation. The GEO Foundation wrote the charters and influenced the curriculum. The GEO Foundation has been hired by the charter schools to be the managing body. However, every school has its own board and each board approves any action taken by the GEO Foundation. C. Endres asked K. Stewart to explain charter school terminology to the SAC. K. Stewart clarified that the GEO Foundation is a sponsor for charter schools.

M. Johnson moved to approve the formation of the Charter School Service Center Special Education Cooperative. S. Tilden seconded the motion. Motion carried 10 Approved; 2 Opposed; 1 Abstention.

Addition August Date-
The Council set another meeting time in August as the date of August 24, 2007.

ARTICLE 7 COMMENTS FROM THE PUBLIC
No comments were made.

Discussion

RULE ~~30~~ 45 COMPLAINTS, MEDIATION, AND DUE PROCESS PROCEDURES
B. Marra reminded the Council of the discussions thus far on the two-tiered system. He mentioned that a former staff member has written a paper on the Board of Special Education Appeals that he would like to get permission to share with the Council. K. Farrell sought clarification on how B. Marra would like to proceed. He indicated that it would be his preference that the Council look section by section and then move to approve it in that manner rather than as a whole rule. N. Brahm indicated that a large portion of this rule has been implemented for the past two years because the federal government required the Division to do so. This pertains to anything in the new IDEIA regulations that were absent from Article 7 or carried a higher level of authority. For those items the Division had to assure the federal government immediate implementation.

511 IAC 7-45-7

G. Bates inquired as to the deletion of the interpreter requirement under Section (d). N. Brahm stated that it is because we are required to provide access under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act it was not mentioned in IDEIA. Therefore, it was omitted (as we are required to provide it under other regulations). R. Burden stated he liked it in Article 7 because it was clear that it was required. That language specifically is: "(8) be provided with an interpreter, if any party to the hearing has a hearing or speaking impairment or other difficulty in communicating, or whose native language is not English." J. Hammond questioned the language inserted at (h), why would you bar any information – do you not want all information you can get? B. Marra stated that part of the issue is we are trying to keep this from looking like a court case as it isn't, it is an administrative proceeding. Part of the issue is to try and keep things moving forward in a timely manner. N. Brahm stated that some people try to hide evidence until the last minute and then give the other party no opportunity to dispute the issue. R. Burden stated that he feels that the 'burden of proof' [at subsection (i)] may create an undue hardship for many families, although he acknowledges that this is a requirement from the federal government.

G. Bates moved to approve 511 IAC 7-45-7 with the change of adding the language at (d)(8) back in. Seconded by S. Tilden. Motion carried with one abstention.

511 IAC 7-45-8

R. Burden moved to approve 511 IAC 7-45-8. Seconded by G. Bates. Motion carried with one abstention.

511 IAC 7-~~30~~ 45-~~4~~ 9 Due process hearing appeals

N. Brahm stated that subsection 9 deals with the Board of Special Education Appeals or BSEA. It creates a two-tiered due process system for Indiana. Since the year 2000, ten BSEA decisions have sought judicial review. We know that they appeal to the court system for further review (as we have to prepare the file for the court), what we do not know is the result of that appeal.

M. Johnson moved to keep the language at 511 IAC 7-45-9 as it is proposed. Seconded by C. Endres.

Discussion
R. Burden inquired as to what are the qualifications of the BSEA as defined by the State Superintendent of Public Instruction. N. Brahm stated that she will check to see what the requirements are and report back at our August meeting. N. Brahm stated that she will make it known to the BSEA that there is a perception or concern that they will not have oral argument. S. Tilden asked if the Council can go beyond federal language and require oral argument. B. Marra stated that the Council can choose that option, but he doesn't know how the State Board would operationalize that language.

J. Hammond called for the vote. Motion carried.

511 IAC 7-~~30~~46-~~7~~ 10 Expedited due process hearings and appeals

N. Brahm indicated that the expedited due process timelines are from IDEA. Discussion took place regarding timeline charts for clarification in Live Learn Work Play.

R. Burden moved to accept the language. Seconded by M. Johnson. Motion carried.

511 IAC 7-~~30~~45-~~8~~-11 Attorneys= fees

N. Brahm pointed out the changes in this section, specifically section (b). S. Tilden expressed concern that the standard in section (b) is highly subjective. B. Marra explained that a judge would make the decision regarding attorney fees.

M. Johnson moved to accept the proposed language in the article. J. Nally seconded. Motion carried (10 accepted, 1 opposed, 1 abstention).

RULE 40 IDENTIFICATION AND EVALUATION

B. Marra gave an overview of Rule 40. B. Kirk brought up the issue regarding other agencies needing IQ tests. K. Farrell gave anecdotal evidence as to what school psychologists have told her about how IQ tests are used in developing IEPs for students. B. Marra re-emphasized the point that IQ testing can be done if the team feels that it is necessary for that particular student.

511 IAC 7-~~25~~40-~~2~~1 Child ~~identification~~ find

N. Brahm explained the new additions under child find. B. Kirk asked why 511 IAC 7-40-1(c) was taken out. N. Brahm indicated that subsection (c) would be going beyond the federal law. N. Brahm stated that it is not applicable in today's society.

M. Johnson moved to accept the proposed language. R. Kirby seconded. Motion carried.

511 IAC 7-40-2 Integrated and focused system to support student success

B. Marra asked the SAC to approve the language and get it out to the public for public comment and make changes if necessary. K. Farrell asked how parents are to be informed of the public agency's procedures. Can it be via the student handbook? Does it have to be individualized to that specific child's parents? N. Brahm stated that if you are screening everyone in the classroom and have not singled any one child out, no notification is necessary.

M. Johnson moved to accept the language at 511 IAC 7-40-2 but agreed that she would like to see a bit more structure or guidance. Seconded by J. Nally. Motion carried.

511 IAC 7-~~25~~40-3 Educational evaluations; in general

N. Brahm indicated that there were no major changes in this section. N. Brahm went over 511 IAC 7-40-3(b) and (e)(4). N. Brahm drew the attention of the Council to subsection 4 and reminded them of the chart from the previous meeting (shared by D. McGrath). The items (A) through (H) at subsection 4 correspond to the headings in the chart that Dr. McGrath had shared.

R. Burden moved to accept the proposed language. J. Nally seconded. Motion carried.

511 IAC 7-~~25~~40-4 Initial educational evaluation; public agency written notice and parental consent

N. Brahm explained the changes under this section. N. Brahm went over 511 IAC 7-40-4(j), regarding the public agency's responsibility to make reasonable efforts to obtain parental consent. M. Johnson asked what would happen when a nonpublic school student who is being referred for an educational evaluation, can the timeline start if the consent is given to an individual who qualifies as certified personnel of the nonpublic school or is it only the LEA certified personnel? What type of information must be included in the referral (to support the child's need for an educational evaluation)? Can

it be that the child is getting Cs and not As? N. Brahm stated that the prior written notice is provided and then consent is sought. Under the federal law you do not have to evaluate just because someone has asked for it. If the request is made, the LEA must either begin the provision of prior written notice and obtaining consent or explain to the parent that the evaluation will not go forth because d, e, and f reasons. R. Burden referred to subsection (b). N. Brahm explained that she feels that subsection (b)'s intent is to prevent a student from remaining in the RTI during his/her educational career, instead of being referred for an educational evaluation.

M. Johnson moved to approve the proposed language. Seconded by C. Shearer. Motion carried with one abstention.

511 IAC 7-40-5 Conducting an initial educational evaluation

N. Brahm gave an overview of this section.

J. Nally moved to accept the proposed language. Seconded by M. Johnson.

Discussion
G. Bates asked for clarification on why the language was changed to 40 instructional days. R. Marra explained the rationale and how roles of personnel are changing with the integrated and focused system proposal.

Motion carried.

511 IAC 7-40-6 Determination of eligibility

J. Nally and R. Burden suggested putting in the 5 components of reading instruction in subsection (b).

R. Burden moved accept the language with the amended language which will add in the 5 components of reading instruction. Seconded by J. Nally. Motion carried

511 IAC 7-25-~~5~~7 Independent educational evaluation

N. Brahm pointed out that subsection (e) is the only change from the current law. R. Burden asked what the public agency criteria is and whether there is guidance as to what can be limited here. K. Farrell asked if the current language didn't refer to the need for the independent evaluator to have the same license, location, and qualifications as the evaluator used by the LEA. B. Marra stated that he doesn't want to see schools giving parents a list of two or three people to choose from.

J. Nally moved to accept the proposed language. Seconded by G. Bates. Motion carried.

511 IAC 7-40-8 Reevaluation

J. Nally asked if we couldn't come up with a different term than reevaluation. B. Marra said that it is so ingrained in everyone's conscious and has a very distinct definition. If you are doing ongoing progress monitoring the child may not need to have additional evaluative information collected and analyzed. If the instruction is working, great. If it isn't then let's reevaluate right now and meet within 40 instructional days so that we can modify the educational program to hopefully 'get it right' for the kid. B. Marra stated that the case conference committee could state yes, they need to conduct a reevaluation but you do not have to obtain written parental consent at that time. So it does add one more step of having to get parental permission approximately 45 to 50 days prior to whenever you will want to reconvene the case conference committee to discuss the evaluation results.

K. Farrell brought the SAC's attention to subsection (h) and indicated concerns in operationalizing (h).

No motion made or vote taken.

Public Comment

No comments were made.

Meeting adjourned at 3:55 p.m.