



Southern Tier Independence Center

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February 1, 2016

NYS Assembly Ways and Means Committee
NYS Senate Finance Committee
Clinton Freeman
LOB 923
Albany, NY 12248

Dear Members of the NYS Senate and Assembly,

On behalf of the Education Advocacy Team based at Southern Tier Independence Center in Binghamton, NY, we are submitting these ten copies of comments on a section of the proposed Executive 2016-17 Education Budget. We are concerned about the underlined section that starts on the bottom of page 46 and continues through pages 47 and 48. This proposal was offered last year (in the Governor's budget and in the Senate Budget as well). It did not pass the budget process due to action by Members of the Assembly. The proposed legislation "would allow School Districts, private schools and BOCES to seek a waiver of certain State-imposed special education requirements. Any School District seeking a waiver would be required to notify parents and include any parent comments in an application to the NYS Commissioner of Education. The Commissioner would be authorized to grant one-year waivers. Waivers have the potential of significantly impacting State requirements related to evaluation of students, delivery of special education, behavior assessment and interventions, and transition to adulthood."

<https://www.nyspecialtaskforce.org/discussion-forums.html>

Last year several information forums were held around NYS to discuss this proposal. The first forum was videotaped and made available for individuals and groups at the following links:

Part 1, the presentation forum

<http://youtu.be/S8Q9aV4dOTk>

Part 2, the discussion

<https://www.youtube.com/watch?v=dOKYvce7syo&feature=youtu.be>

We object to this proposal for the following reasons:

The language is vague and non-specific. Although NYS education regulations exceed IDEA, in the past, the Board of Regents has suggested regulatory changes which were open for public comment and review. This proposal appears to take special education decision making away from the CSE, the Board of Regents and the Legislature and places it with the Commissioner.

It would seem (according to the language in the proposal) that if a school applies for a specific waiver from a specific regulation and it is granted, and if a student moves into that district after the sixty day period for parents to raise concerns, a student will have to wait for the following school year to raise concerns if the waiver is requested again. This proposal places the burden on parents to anticipate all implications of a school's proposal. Trusting the school to lay out in detail and in complete honesty the implications for each child is optimistic at best. There does not appear to be any recourse or appeal mechanism once a decision is made by the Commissioner. The standards by which a proposal will be judged are very vague and give tremendous leeway. For lawyers this raises issues around due process/fair hearings. What if a need arises in relation to a particular student after the waiver is approved? That student's parents would have no opportunity to object.

Last year staff from Senator Flanagan's office indicated that this was offered as mandate relief, but we are concerned that instead of having relief that would cover all districts, this proposal seems to allow districts to pick and choose what regulations they wish to change. By the way, school districts have always been able to request waivers. Why is this proposal in the budget? Current waiver requests can take months and months – how will this particular waiver process be expedited by NYSED?

Of particular note – both lawyers for parents and lawyers for school districts looked at this proposal last year and raised these issues, also stating that this would be very difficult to defend in a fair hearing process.

For these reasons we respectfully request the Legislature to remove this proposal from consideration in the 2016-17 Education Budget. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in cursive script that reads "Susan Ruff". The signature is written in black ink and is positioned above the typed name and title.

Susan Ruff
Advocacy Director
Chair, STIC Education Advocacy Team