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DEPARTMENT OF EDUCATION
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IOWA STATE DEPARTMENT
OF EDUCATION

(Cite as 18 D.o.E. App. Dec. 304)

<i>In re Petition by the Iowa State Education Association for Rulemaking Relating to Practitioner Prerogatives Granted by State and Federal Rule & Law in Special Education</i>)	DENIAL OF PETITION FOR RULEMAKING
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May 24, 2000

Dr. James Sutton
Organizing Development Specialist for Professional Issues
Iowa State Education Association
777 3rd St.
Des Moines, Iowa 50309

Dear Mr. Sutton:

Your petition for rule making was filed in our office on March 7, 2000. In the petition you filed on behalf of the Iowa State Education Association (ISEA), you requested that the rules of Special Education at section 41.3, "General Principles," be amended. You have requested the Department to add a new section 10 that enumerates "practitioner prerogatives" granted by existing State and Federal law and rule. Although your Petition acknowledges that these "practitioner prerogatives" are already granted under existing State law, Federal law and rule, you seek an amendment of the Department's current Special Education rules in order to list all of these "practitioner prerogatives" in a single place. Your Petition seeks "an explicit statement of existing prerogatives in a single place in rule so that parents, practitioners, administrators and other interested parties may have easy and effective access to prerogatives".

This is to advise you that after extensive discussion and consideration of the merits of your Petition by members of the Department, it has been determined that your Petition to amend Chapter 281 of the Iowa Administrative Code, by adding new section 41.3 (10), should be denied. Although we understand the reason why you wish to provide Iowa educators with a list of "existing prerogatives" in a single place, the rule making process is not the appropriate vehicle to accomplish that goal. We believe it would be more appropriate to collect all of these "practitioner prerogatives" in a guidance

document that could be disseminated to interested parties and kept by them as a reference. We realize that the Department's Administrative Rules may not be readily accessible to most classroom teachers. Therefore, it appears to us that a statement of "practitioner prerogatives" in a *guidance document* would be more useful as a reference to parents, practitioners and administrators.

Furthermore, the Federal law that provides the basis for the special education rules (IDEA) is intended to provide protections and assurances of access to a free appropriate public education for students with disabilities. The law was not primarily intended to protect or delineate the rights of teachers. The law prescribes the obligations of public agencies that provide special education and related services, not the obligations or "rights" of individual professionals.

Should you decide to disseminate your proposed rule 41.3(10) as a guidance document for educators, parents and administrators, we would like you to consider revising some of the statements contained in your proposed rule in light of the department's comments to specific provisions (which appear in bold type):

41.3(10) Practitioner Practices Federal and State law and rule authorize practitioners to:

a. Act as an advocate for the student.

There's no basis for this statement in the IDEA, existing state administrative rules in Chapter 41, or other provisions of the State Code or State Administrative rules. This appears to be a professional ethical obligation that would not be appropriate for these rules.

b. Seek assistance for a student that is not receiving a benefit from Special Education.

If this item is referring to a student who is currently receiving special education as an eligible individual, rule 41.61(3) requires each agency to insure that Individual Education Program (IEP) teams review the IEP at least annually to determine that the annual goals are being met and to revise the IEP as appropriate to address any lack of expected progress. The rule requires public agencies to have this procedure in place. Its requirement is clearly not the exclusive "prerogative or obligation" of an individual practitioner under these rules. If this item is referring to a practitioner prerogative to seek assistance for a student who is not currently identified as being eligible for special education, but who may be eligible for and need such services, again, it is a requirement of the public agency to have policies and procedures in place for the identification of eligible individuals. (Chapter 41-Division VII).

- c. Inform parents of their rights to Special Education services for their child.*

Chapter 41 requires public agencies to have procedures for insuring procedural safeguards for children with disabilities and their parents [41.12(7)]. Also, AEAs are required to take proactive steps to educate and inform parents regarding eligibility, the identification criteria and process, and the due process steps to be followed when parents disagree with the agency's determination. [41.18(6)]. Rule 41.104(3) also requires that parents receive a written copy of procedural safeguards (at a minimum) upon initial referral for evaluation; upon each notification of the IEP meeting; upon reevaluation and upon request for a due process hearing. All of these requirements are the responsibility of the public agency, not an individual "practitioner".

- d. Participate in the self-evaluation and accreditation of a school's or district's Special Education delivery system.*

Chapter 41 rules require that public agencies are responsible for evaluating the effectiveness of special education [41.12(4) and 41.18(2)(d)]. Again, this is the responsibility of public agencies, not individual practitioners per se.

- e. Have a student fully evaluated.*

If this item is referring to a evaluation to determine whether a student is eligible for special education, current special education rules require that the AEAs develop and implement an identification process [41.48] that includes both general education interventions [41.48(2)] and a full and individual evaluation. The IEP team, which includes the general education teacher, may determine when a full and individual evaluation shall be conducted [41.48(2)].

- f. Receive training needed to implement an Individual Education Plan (IEP) or other Special Education duties.*

If this item is referring to an a IEP, current special education rules require that the content of an eligible individual's IEP address the program supports for school personnel that are needed in order for the student to progress [41.67(1)(c)]. Responsibility for the process of IEP development rests with the public agency, not individual practitioners per se.

- g. Receive support services stipulated by an Individual Learning Plan.*

There is no reference to an "Individual Learning Plan" in federal or state law, or administrative rules. If the term "support services" is referring to those services defined at 41.86, those services are provided to eligible individuals, not "practitioners."

- h. Participate in establishing or assessing the effectiveness of a student's Individual Learning Plan.*

There is no reference to an "Individual Learning Plan" in federal or state law, or administrative rules. Assuming you are referring to an IEP, it is a requirement of both federal law and state regulation that the general education teacher participate in the development of the IEP.

- i. File a caseload appeal with the Iowa Department of Education.*

Current special education rules provide this opportunity to any individual or organization [41.105]. This opportunity is not limited to "practitioners". Also, it is relevant to note that schools are required to have a process for responding to teacher concerns about case load [41.84(2)(b)(3)]. The AEA must also have a procedure for monitoring the caseloads of LEA and AEA special education personnel to insure that the IEPs of eligible individuals are able to be fully implemented [41.18(2)(c)].

- j. Decline to perform intrusive medical procedures upon a student.*

Special education laws or rules do not address this issue. However, under the Code of Iowa (covering all general education practitioners), non administrative personnel are not required to provide any special health services or intrusive non emergency medical services for students "unless the non administrative personnel are licensed or otherwise qualified and have consented to perform the services." Section 280.23, Code of Iowa (1999).

- k. To be treated as a professional pursuant to rules of ethical practice.*

This is a matter of professional ethics and is not appropriate for special education rule making procedures.

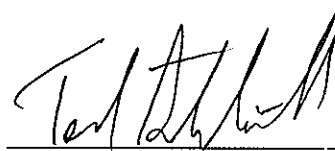
- l. Perform professional services for which the practitioner is licensed and decline assignments for which the practitioner is not licensed.*

Special education rules state that special education personnel shall meet the Board of Educational Examiners' licensure (certification) and endorsement or recognition requirements for the position for which they are employed. [41.8]. Such licensing requirements establish the scope of any individual license holder's practice. Statement "P", although not using the same words, already exists in the Special Education rules.

The specific comments given above are provided to advise you of the basis for the Department's denial of your Petition for Rulemaking. Hopefully they will be helpful to you if you decide to draft a guidance document for parents and educators

This constitutes final agency action for the purposes of appeal to District Court under the provisions of Iowa code chapter 17(a).

5/24/08
Date


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Director

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