

## Issue # 1-

### **2004 Re-Authorization of the *Individuals with Disabilities Education Act (IDEA)*.**

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The IDEA was re-authorized in November 2004. As states began the process of writing regulations relative to the most current mandates of the act, the federal regulations were published in mid August 2006. New Jersey's Special Education Code N.J.A.C. 6A:14 was updated effective September 5, 2006. Since all updated state regulations must reflect new mandates conforming to the federal regulations, the code has undergone a number of revisions since 2006. In August of 2011 the Code will sunset, which means further, more extensive revisions may occur. There will thus be an opportunity for testimony on any regulation within the revision. NJSHA's School Affairs Steering Committee will be watching for any action relative to N.J.A.C. 6A:14.

a) The most disheartening change in the re-authorization of IDEA relative to SLPs is that the "highest qualified provider" clause has been eliminated and replaced by "highly qualified provider." This change means that each state will be able to determine the highest level of requirement for the certification of an SLP in the schools. The result may be that some states now requiring Master's degrees will lower their standards for certification to a Bachelor's degree. Such a relaxation in standards will directly affect the future services that students with language-learning disabilities all over the country will receive. Another negative effect could be the inability of personnel who do not have Master's level training to appropriately diagnose speech-language disorders, especially if the disorders are subtle, rare or simply out of their accumulation of knowledge and experience. There are no current plans for New Jersey to take the route of changing certification requirements, but the *School Affairs Steering Committee* and the *Legislative Committee* of NJSHA will be monitoring the situation.

A critical issue relative to qualified providers will be the re-imbusement of Medicaid services in the schools. Medicaid requires that an SLP with credentials commensurate with ASHA requirements for the *Certificate of Clinical Competence (CCC)* must sign off on students receiving Medicaid monies if a provider with less qualifications is providing the services. In some states, providers must have CCC to sign off. In New Jersey CCC or

equivalent, which can be a license obtained from the Division of Consumer Affairs in Newark after January 1993, would suffice. Medicaid requirements have brought added work and dilemmas for school-based SLPs. Currently some school based SLPs in New Jersey are questioning the fact that schools seem to be allowed to use their credentials (either a license from the Division of Consumer Affairs in Newark or CCC) without their explicit permission. Although these credentials can be found on-line, the question as to whether the Public Consulting Group (PCG), the group that runs NJ's SEMI program in the schools and districts have a right to use an individual SLS's credentials without their explicit permission. Since signing off on Medicaid is now done via computer and since SLSs are being directed to input their students, does such input constitute permission even if an SLS does not wish to grant such permission? This is a question that remains unanswered and requires further research.

Other changes in the re-authorization of IDEA include the possible elimination of objectives from IEPs (not yet happening in New Jersey), proposed paperwork reduction to be piloted in 15 states, 3 year IEPs, relaxation of requirements on attendance at IEP meetings and the re-instated ability to amend an IEP with a parent signature instead of holding a formal IEP meeting. Joining national and state speech-language-hearing associations will help SLPs to keep abreast of current issues. Both ASHA and NJSHA have venues for alerting members about writing and submitting testimony or letters to their constituents at critical points.

b) Two changes of note in the IDEA are the enabling of districts to choose to (1) use IDEA funds to provide early intervening services (EIS) and (2) use Response to Intervention (RTI) in place of the discrepancy formula for the classification of *specific learning disability* (SLD) and possibly other disabilities. These possible choices translate into interventions being designed and carried through by professionals who evaluate students with learning disabilities and who may now be able to work directly with teachers to provide strategies and techniques that will aid in discriminating children who are delayed or environmentally deprived from those who truly have learning disabilities. If their districts choose to participate in EIS or to use RTI, SLPs should work with other district professionals to become involved in both initiatives. Such involvement could present a chance to show districts what a significant asset SLPs' knowledge of language is in developing strategies and techniques to help students to read more fluently, to comprehend information being conveyed by teachers and to express themselves more appropriately and accurately. EIS and RTI are in

alignment with the *No Child Left Behind Act* (NCLB), the name of which is soon to be adjusted. Students will not be considered to have a disability if they have not been instructed in reading and math programs based on “evidenced-based practice.” (EBP)

A final change in the original re-authorization of the IDEA has been resolved due to the proactive efforts of ASHA. *Specific Learning Disabilities* (SLD) – (Sec. 300.308, Group Members) was changed to require the eligibility group for children suspected of having SLD to include the child’s parents and a team of qualified professionals, including speech-language pathologists. Originally, SLPs were omitted from the list of team members until ASHA lobbied for them to be listed in the final regulations, as they had been in the 1999 final Part B regulations.

c) When the New Jersey Special Education Code N.J.A.C. 6A:14 was re-adopted, criteria for SLD was changed due to new requirements of IDEA to allow for RTI in place of a discrepancy formula. Criteria for the categories of *Communication Impaired* (CI) and *Preschool child with a disability* (revised category name) also were altered. Although the change in the criteria for CI was minimal, misinterpretations of the intent of this change already have occurred. Two examples of such misinterpretations are that there will be no more classification of CI for middle and high school students and that the Learning Disabilities Teacher Consultant (LDTC) must demonstrate that the children’s scores on educational testing are below the 10<sup>th</sup> percentile. In actuality, the only change in the criteria is that the words “(test of) oral language” were changed to “one of which shall be a comprehensive test of both receptive and expressive language.”

In prior codes there had been no specific criteria for the category previously labeled *Preschool Disabled*. The current *Preschool child with a disability* category requires that “a developmental delay shall mean a 33 percent delay in one developmental area, or a 25 percent delay in two or more developmental areas.” Percent of delay is calculated by comparing a child’s chronological age with the language age achieved on a standardized measure.

d) Because New Jersey’s Special Education Code 6A:14 was opened for revision, some regulations that do not relate to the re-authorization of the IDEA also may have been changed. One area in which this has happened is that of consultation. Previously consultation could not be considered as a service delivery option for speech-language services in New Jersey. This

has been changed to allow for consultation by related services providers, teachers of students with disabilities or child study team members to general education teachers and/or teacher aides. If used, consultation must be specified in each student's IEP along with the frequency and duration of the consultation(s). Examples of tasks that may be considered for consultation also are included.

Consultation is only one area not reflecting a change in the IDEA that has been altered in New Jersey's Special Education Code. There are numerous additional revisions in regulation. The soon to be appointed Commissioner of Education in New Jersey, Christopher Cerf, may be looking at other more restrictive regulations in N.J.A.C. 6A:14 that do not appear in IDEA and may consider their elimination. It is the responsibility of SLPs who work in the schools to keep current on issues relative to the IDEA and to read the entire revised special education code.

Most notably, IDEA is up for re-Authorization in 2010. The 2004 re-authorization was two years delayed. It will be interesting to see if the 2010 re-authorization follows the same pattern.

### **Implications for Speech-Language Pathologists Who Work in School-based Settings - *Issue #1***

a) SLPs must remain aware of Medicaid requirements and of the duties they are asked/told to perform. Implications relative to liability are of the utmost importance and should be considered by all personnel before signing any Medicaid document. Requirements, such as logging of services performed for Medicaid reimbursement, are also changing and no doubt, will cause more paperwork for school-based SLPs. SLPs should advocate to have some of the significant financial reimbursements from Medicaid go back to the speech-language department in some manner. If they do not, more of their time will be demanded with no rewards.

If students under Medicaid are served by Bachelor's level practitioners who must have a Speech Correctionist certificate, Master's level SLPs in school districts may be directed to sign off for Bachelor's level practitioners who will be considered under their direction. SLPs must be knowledgeable about what the term "under the direction of" means. ASHA has prepared a statement on this topic. SLPs should be aware that signing off on Medicaid is a choice not a mandate and they may seek legal counsel privately or from

their education associations (unions) if they are directed to sign off. Signing off on Medicaid means that an SLP has satisfied the Medicaid requirements of “under the direction of.”

The requirements below are listed in an attachment to a January 5, 2009 memo from Barbara Gantwerk, Assistant Commissioner, Division of Student Services, They are as follows: "'Under the direction' means that the ASHA-certified or equivalent personnel:

- Maintains responsibility for the services delivered;
- Sees the student, at least, once;
- Provides input into the type of care provided;
- Monitors treatment status after treatment has begun;
- Meets regularly with the staff being supervised; and
- Is available to the supervised staff."

The above list omits the fact that the SLP who signs off *agrees to accept legal responsibility for any action brought against the practitioner who provided services*. There are implications for being held liable for another's services and for supervising a colleague, which is why NJSHA feels signing off on Medicaid must be a choice. If an SLS does sign off and does not meet all of the requirements listed above, fraud is being committed. In New Jersey school districts, an individual must have a supervisor's certificate to supervise, which NJSHA feels is another issue to consider when another employee is “under the direction of’.” SLPs may also seek the aid of ASHA and their state association if told to sign off for another practitioner for Medicaid.

In addition, there is some question about the requirements for certification of personnel who can sign off on Medicaid. The Gantwerk memo clarified criteria for SLPs signing off on Medicaid (available in the Members Only section). It states that the SLPs "must be: certified or endorsed by the Department of Education and hold a Master's Degree in speech pathology and hold a Certificate of Clinical Competence by American Speech and Hearing Association (ASHA); or certified or endorsed by the Department of Education and hold a Master's degree in speech pathology received after January 1, 1993 and completed the equivalent educational requirements and work experience necessary for ASHA certification." The reason that SLPs who obtained their Master's degree before 1993 and have a hold a state license from the Audiology and Speech-Language Pathology Advisory

Committee cannot sign off on Medicaid is that the requirements for state licensure prior to 1993 were not rigorous enough to meet ASHA standards. For example, prior to 1993 a clinical fellowship (CF) was not required for licensure. The question was whether or not SLPs must have state licensure in addition to the SLS certification and CCC to sign off on Medicaid. According to clarification NJSHA has received, some school districts may of their own accord be requiring licensure, but the state does not. It is suggested that school-based SLPs ask their school Medicaid coordinator this question or call a representative from PCG.

Finally the memo states "school districts are required to maximize their participation in the Special Education Medicaid Initiative (SEMI)." This statement could put pressure on SLPs with the appropriate qualifications to sign off on Medicaid for others as well as themselves. Again, consult with an attorney if you have concerns.

Lowering the highest qualified provider standard in IDEA allows states to reduce standards in certificates for personnel who provide speech-language services to students. Already, in California and Pennsylvania, state departments of education have created certificates that could potentially replace SLPs in schools. If there was ever a time for SLPs to demonstrate their worth in the schools, it is now!

**b)** In districts that choose to use EIS and RTI, SLPs should become involved, which would be an excellent way for SLPs to demonstrate the value of their knowledge relative to reading and learning. Language is the basis of all curriculum. If SLPs do not work with teachers to provide language-based strategies for students at risk, someone else with a good deal less knowledge about language will. If early intervening services for students with potential language disorders are to be successful, the personnel with the expertise in language (SLPs) should be one of the team members providing the services. SLPs should work with their school's administrators to be sure they are a part of these services. SLPs also have a great deal of knowledge and know many strategies to help students with language-based reading disorders. EIS is an excellent way to share knowledge and reach students who have language and language-based reading issues by going into the classroom and demonstrating techniques that teachers can eventually use on their own or combined with consultation efforts. When SLPs are given the option to attend a continuing education program on RTI, they should jump at the chance. SLPs also must remain knowledgeable about

Evidence Based Practice (EBP) to support the interventions and programs that they are using with disabled students.

SLPs who have been providing in-class services over the years will be better prepared to work with teachers on strategies for both EIS and RTI. In a sense the implementation of in-class services, if provided appropriately, has already proven to be EIS for students who just happened to be in a class serviced by in-class SLPs. Even if a school is not currently implementing RTI, it may become the wave of the future. Keep in mind that the impending 2010 Re-authorization of IDEA may include more mandates for RTI. One way to prepare for RTI and show their worth is for SLPs who have not already done so to come out of the closet and provide in-class services. Remember, research has revealed that reading is a language-based skill, beginning with the area of phonology. The SLP's expertise in phonology as well as all other aspects of language renders her/him a key player in the facilitation of reading skills. ASHA fought hard to have the SLP designated as a team member who could help with the diagnosis of SLD. Don't miss this opportunity to share knowledge and let others learn that the SLP has expertise in improving students' chances to learn to decode, read more fluently and comprehend what has been read.

c) SLPs should be aware of misinterpretations of the altered criteria for CI. If told that there is substantive change in the criteria, SLPs should compare copies of the wording of the criteria in previous code with current code, demonstrating the minimal change to their administrators.

Since language age on a standardized test is the least reliable indicator of a child's delay, testimony in the area of the classification of preschoolers with a disability will be needed when the code is re-opened for comment. Using percent delay causes some children who should not be eligible for services to become eligible while causing others who should be eligible for services to be found ineligible. Although it is not in code, the State Department of Education has indicated that instead of using percent delay, standard scores may also be used for preschoolers. Unfortunately, the Department is recommending 2 standard deviations below the mean as criteria, which ignores preschoolers who have mild and moderate language delays or disorders. This appears to be in contradiction to recent acknowledgement by federal and state agencies that early intervention is critical. It is important to perform a good functional assessment and to support eligibility of preschoolers who have language delays and disorders that are truly

impacting, in some cases compromising, their educational performance but may not meet restrictive criteria. Again SLPs should remain aware of the revision of code and watch for e-mails from NJSHA containing sample testimony to help rectify this problem

**d)** In previous codes, consultation could not be considered as part of IEP services. The inclusion of consultation is another reason to become familiar with in-class services. It is more difficult to consult without knowing the ins and outs of classroom life. SLPs should also be ready to advocate for services that must be delivered directly by them. Although consultation is now in regulation, it does not replace the requirement for direct services if those services are what is needed to deliver a free appropriate public education (FAPE). Consultation will require logging what was done with whom. It has been reported that some administrators and child study team case managers do not like to put consultation down as a related service when it is in addition to pull-out and/or in-class services. Again, all decisions must be made by the entire IEP team based on the needs of the individual student.

**e)** When IDEA is re-authorized in 2010, the New Jersey Special Education Code 6A:14 will be revised. Keep current on this event. NJSHA will be sending out alerts with sample testimony for SLPs to submit on various issues in code. Any regulation may be addressed when the code is revised and the department of education does consider all testimony, especially numerous testimonies received on similar issues. Please be proactive and send in testimony when the opportunity presents itself.

## **Issue # 2**

### **Hot Issue - Missed Speech-Language Sessions**

Over the past few years, in a number of districts SLPs have been told that they must make up all speech-language sessions missed due to the SLP's absence. Speech-Language Specialists (SLSs), who are directed to make-up sessions, should keep two things in mind. First SLSs, like all teachers, are entitled to take off days as stipulated in their contracts without having to make up their time off. Second, where is the time to make up sessions, when there is barely time in most situations to complete evaluations, IEPs and mandated meetings?

Information received from the New Jersey State Department of Education is that NOT ALL sessions must be made up. One session missed here and there is not a problem. Problems occur when there is a pattern of absences and a student's right to FAPE has been compromised. SLSs should try to make up sessions when possible, but that is not possible unless there is adequate testing time in a schedule along with lunch and preparation periods that can be flip-flopped. If, however, sessions are being made up by increasing the number of students in each group, for example, that may jeopardize the right to FAPE of even more students. Log any such patterns, especially if group size is specified in the IEP. If SLSs are constantly using contractually-provided prep time to make up sessions, the contract is being violated and it can be grieved. Payment should be a portion of the SLS's salary, not coverage pay, because the SLS is actually planning for and teaching an extra period. None of the actions suggested above should be taken without informing the local union president and requesting a file on the situation to be kept.

Keep in mind, however, that if an SLS has time in her/his schedule to make-up students, NJSHA is not against this practice. If an SLS can fit students who have missed services appropriately into another group, there is no reason not to make-up those sessions. If an SLS has open slots in a schedule or is not making use of a testing/case management period, those times can be used appropriately to make-up students who have missed sessions due to their own or the SLS's absence. What NJSHA is against is the requirement for SLSs to make up all sessions due to use of personal or sick days, regardless of the manner in which sessions are made-up or the appropriateness of the make-up groups. The issue of professional days is more difficult to address since those days often are granted at the discretion of the district. If other staff members are granted professional days without a requirement to make them up however, SLSs should also be granted such days without question. Contesting make-ups on professional days may boil down to picking your battles. As far as arguments for the granting of professional days, SLPs should point out that unless they remain current on new techniques and techniques to which they may not yet have been exposed, the students they serve may be denied FAPE and will certainly require services for longer periods of time. They should also point out any practice that allows other teachers to take professional days while SLSs are required to make them up. This is another unfair practice that should be brought to the attention of local education associations.

## **Implications for Speech-Language Pathologists Who Work in School Settings - Issue #2**

If directed to make up missed sessions, SLSs should ask their directors/supervisors to call the county office of education and ask the special education consultant in that office to refer to the clarification in the November 30, 2005 letter from Carol Kaufman. A copy of Ms. Kaufman's letter is in the Members Only section. Copies of other letters of clarification on many aspects of Code, may also be accessed by members at [www.njsha.org](http://www.njsha.org) under the title, *New Jersey Speech-Language-Hearing Association School Affairs Steering Committee Index and Compilation of: New Jersey Department of Education Code Clarification Letters and Complaint Investigation Reports Impacting Speech-Language Services in the Schools*. If contacting the county office of education does not alleviate the directive, immediately inform the local union about requirements being set to make up missed sessions. Inform the president of the union that NJEA has alerted the county UniServ offices to distribute the message that directing any teacher to make up days for their absences is against contract and puts all members' rights to use their personal, sick and professional days at risk. Ask your local president to call the county UniServ office for clarification on this issue. Also let NJSHA know if you are being directed to make up missed sessions. Failure to take action may cost SLSs their right to take sick, personal and professional days as guaranteed in contracts. Remind your union presidents that such loss of contractually designated absence days could set a precedent for the loss of days by other personnel under a union contract in the schools.

### **Issue # 3**

#### **SLS Certificate and Emergency Certification**

Almost from the point that it was placed into regulation, the Speech-Language Specialist (SLS) certificate (required for an SLP to work in NJ's schools) was a problem. Prior to 2003 the requirements were so specific that they became restrictive. Some SLPs who were duly certified by ASHA and/or licensed in NJ, did not meet the requirements for the SLS certificate. After over a decade of testimony to and networking with the New Jersey Department of Education, the SLS certificate has finally been changed in regulation (October 6, 2003).

The NJ Administrative Code, 6A:9-13.6 Speech-Language Specialist, now contains the following requirements:

(a) The speech-language specialist endorsement authorizes the holder to provide service as a speech-language specialist in grades preschool through 12.

(b) to be eligible for the standard educational services certificate with a speech-language specialist endorsement, the candidate shall:

1. Hold a master's or higher degree in speech-language pathology from a regionally accredited college or university; and

2. Pass a State-approved test of comprehensive knowledge in the field of speech-language pathology.

(c) Individuals who hold a valid New Jersey speech correctionist endorsement and a master's degree in speech-language pathology shall be issued the speech-language specialist endorsement upon submission of a completed application and required fee.

(d) Individuals holding a valid New Jersey speech correctionist endorsement who have completed seven years of work as a speech correctionist in a New Jersey school setting and a Department-approved retraining program may serve in a position requiring speech-language specialist certification.

(e) An emergency certificate may be issued to a candidate who holds a bachelor's degree in speech pathology or is enrolled in a master's program in speech pathology and has completed a minimum of 12 graduate semester-hours in speech pathology. All study must be completed at [from] a regionally accredited college or university. The emergency certificate may be renewed a total of four times.

(f) Applicants in possession of a written evaluation completed by the office prior to (the effective date of this chapter) will have five years from (the effective date of this chapter) to complete the requirements set forth in the written evaluation.

A positive change in IDEA 2004 concerns emergency certificates. 34 CFR sec. 300.156(b)(2)(ii), consistent with section 612(a)(14)(B)(ii) of the Act, requires States to ensure that related services personnel who deliver services in their discipline or profession have not had certification or licensure

requirements waived on an emergency, temporary, or provisional basis. This means that a State may no longer grant emergency certification. NJSHA testified that New Jersey's regulations allow use of emergencies when a "suitable" candidate cannot be found. Removal of the word "suitable" in regard to an emergency certificate for an SLS position was suggested in 2008 testimony. The Department of Education disagreed with this suggestion. NJSHA followed up on this disagreement by writing to the federal Office of Special Education Programs (OSEP) to ask whether or not this regulation is in line with the federal mandate. The response indicated that emergency certificates are against regulation and a violation of IDEA.

Although the NJ Department of Education has received notice from the US Department of Education that emergency certificates for related service providers are against IDEA regulation (federal letter available in the Members only section), the ability to hire emergency certified personnel continues to be abused. There have been reports to NJSHA that educational services commissions, which tend to pay less than school districts, are using emergency certified personnel when contracting out to districts. If districts had hired personnel directly, they may have been able to find duly certified individuals. In some cases, districts are obtaining emergency certificates when openings previously held by duly certified personnel become available. Since even state law requires that a district must hire the highest qualified provider, NJSHA is concerned about the continued abuse of emergency certified speech-language personnel. If this problem is to be alleviated, the Office of Licensure and Credentials and the Office of Special Education (both in the New Jersey Department of Education in Trenton) will need to work together.

New Jersey certification regulations state emergency certificates will be granted only for personnel who have at minimum of a bachelor's degree in speech-language pathology. Unfortunately, individuals who have a bachelor's degree in another field and are enrolled in a Master's program with 12 credits completed may also receive an emergency certificate. This is problematic because the regulations do not say that the individual must be matriculated in the master's program, which means that some individuals who have completed 12 credits in a master's program may not have completed any of the prerequisites for a master's degree in speech-language pathology and will most likely have no knowledge of or training in therapy or diagnostics.

## **Implications for Speech-Language Pathology Students who Intend to Work in School-based Settings - Issue #3**

Although ASHA and state speech-language-hearing associations worked to encourage officials to ensure that the highest qualified provider clause remain in the IDEA, they were unsuccessful. The states now have the responsibility of regulating the degree necessary to practice in the field of speech-language pathology in the schools. The overall effect may be to weaken the caliber of professionals working in our nation's schools.

Due to the high cost of educating children, schools are attempting to keep students with more severe disabilities in their home schools. This is good news for the LRE requirement of the IDEA, but to keep students with severe disabilities in district while serving them effectively, proper supports must be provided. Highest qualified SLPs will be needed to deal with these students if progress is to be made and especially if all students with disabilities are required to meet the benchmarks of the NCLB Act. It is therefore contradictory for SLPs not to be required to meet the highest qualified provider requirement.

SLSs must be aware of what is going on when they are interviewing for a job and after securing one. If any SLP becomes aware of not being offered a job due to being bypassed for an individual for whom the district had to secure an emergency certificate, it should be reported to the NJSHA office. Individuals do not secure emergency certificates; only school districts can do so. Encourage administrators to hire duly certified personnel, because it is the law and because services are too broad to be understood and implemented by an individual who is not duly certified. Individuals, who work under emergency certification often have not had any practicum experience and know little, if anything, about diagnostics.

Another detrimental consequence of employing underqualified personnel might be the over identification of students who have developmental speech or language problems that pose no educational consequence. Students whose speech or language weaknesses do not affect educational performance and are not disabling should not be classified under the IDEA. Conversely, underqualified providers could miss the more subtle and truly disabling speech and language problems that can significantly impact students' educational performance. In addition, SLPs without Master's degrees and

equivalent of CCC cannot sign off on Medicaid, which brings in a significant amount of money to districts.

If any school-based SLPs have information that an emergency certificate was granted when a duly certified SLP applied for the job, this can and should be reported to the County Office of Education or State Department of Education. If nothing else, make NJSHA or the New Jersey Association of Speech-Language Specialists (NJASLS) aware of any such occurrence. NJSHA is willing to report any abuse of emergency certificates - e-mail [info@njsha.org](mailto:info@njsha.org).

Upon graduation, SLPs should apply for every certificate or license in the state in which they anticipate wanting to work and for which they qualify. It will be much easier and possibly, less expensive to secure them at graduation than twenty years from now. Keep original records of all practicum hours *forever!*

SLPs should monitor current practices and advocate for changes in regulation that may harm the profession. Only with the active participation of professionals will the careers of SLPs remain rewarding and unthreatened.

#### **Issue # 4**

#### **N.J.A.C. 6:28:23A - Fiscal Accountability Regulations**

A recent change in Administrative Code intended to implement the CORE bill (N.J.A.C. 6:28:23A) has occurred as a new funding regulation. Since the adoption of this bill, SLS positions as well as other positions in schools have been arbitrarily eliminated in various districts, regardless of the fact that there has been no attrition and in many cases a need for increase of speech-language personnel. Decrease in personnel has been due to the section of the code granting the Executive County Superintendent an inappropriate and unintended level of authority and review. SLS positions fall under federal and state laws and, as all special education personnel, were not supposed to be part of cuts for efficiency. NJSHA has joined many other organizations and thousands of advocates urging the Department to back away from these provisions and has asked that Governor Christie immediately repeal administrative code intended to implement the CORE bill (N.J.A.C. 6:28:23A) section 2.7.

When Governor Christie revealed his proposal for budget cuts, many SLSs as well as other special education personnel, both tenured and non-tenured were impacted by reduction in their staff. This occurred in spite of the fact

that *Maintenance of Effort* regulations are required in IDEA. The Governor and his appointees claim that all special education students should be getting what is mandated in their IEPs but there was no monitoring of reduction in special education positions in each individual district. Special education positions were reduced with no more consideration than general education positions. In addition, inappropriate directives that are against state and federal regulations, such as no longer serving middle and high school students, seeing all students in class and in maximum group sizes and not classifying students as Eligible for Speech-Language Services (ESLS) unless their grades were low, began to surface.

### **Implications for Speech-Language Pathology Students who Intend to Work in School-based Settings - Issue #4**

Connected to the funding bill is a hypothetical *Model School* designating "fiscally responsible" numbers of teachers and other personnel per student(s) in a school, a template of which has been sent to district superintendents. The result has been the firing of child study team (CST) members, speech-language specialists (SLS), as well as other personnel in order to ensure that the district is not held accountable for being fiscally irresponsible. The use of such a model to demonstrate "ideal" numbers of any special education personnel is unfounded, flawed and in some cases has resulted in potential violations of state and federal special education law.

Special education personnel were never intended to be considered as part of these cuts because their employment is based on state and federal special education regulations. SLS positions fall under federal and state laws and, as all special education personnel, were not supposed to be part of cuts for efficiency. If SLSs become aware of unfounded elimination of SLS positions, they should work with their education associations to show that students with speech-language disorders will not receive FAPE if needed positions are cut. They should make NJSHA aware of reduction in staff.

Make education associations aware of the maintenance of effort requirements in IDEA

#### **§ 300.203 Maintenance of effort. (b) (2) states:**

"An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same,

either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section."

Ask the education association to request proof of how the state is ensuring that this requirement was met in the districts where reduction of special education staff occurred, possibly based on the *Model School*.

Though there is mention in the funding bill of the requirement for districts to use funds needed to maintain a *thorough and efficient* system of education and stability of a district board of education's overall operations (6A:23A-9.8 (a) 2.), there is no mention of the state's or district's responsibility toward *maintenance of effort* relative to IDEA nor to FAPE of students with disabilities, a main tenet of IDEA.

NJSHA informally reported districts that reduced SLS and other special education positions as a result of the recent budget cuts, to the New Jersey Department of Education. Also reported were districts where inappropriate directives were given. In an informal response, NJSHA was told that potential violations must be reported individually as complaints. SLSs again will need to be vigilant to prevent potential, unjustified elimination of positions in their districts.

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