TO: Illinois State Board of Education
FROM: Christopher A. Koch, Ed.D., State Superintendent of Education
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Agenda Topic: Discussion Item: Part 226 (Special Education)

Materials: Recommended Rules

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Purpose of Agenda Item
The purpose of this agenda item is to present the summary and analysis of comments received about the proposed amendments to the Board for discussion.

Relationship to/Implications for the State Board's Strategic Plan
The proposed changes address Strategic Goal 1, in that they help ensure that students with disabilities receive a free and appropriate public education in the least restrictive environment with the appropriate supplementary aids and services.

Expected Outcome of Agenda Item
The Board will be provided an opportunity to consider and discuss the comments submitted regarding the rulemaking, as well as the staff's analysis of those comments.

Background Information
Both Sections 226.730 and 226.731, which address class size for self-contained special education classrooms and class composition in general education classrooms, are being proposed for repeal. These requirements exceed those that are found in the federal Individuals with Disabilities Act (IDEA) and its implementing regulations and have resulted in several unintended consequences. The elimination of state requirements specific to class size and class composition will best ensure that each student with disabilities is placed in the least restrictive environment (LRE), as directed by his or her Individualized Education Program (IEP), and has access to the broad array of coursework available to his or her nondisabled peers, particularly in the middle grades and high school.

Staff believe that school districts, through the IEP process, should determine locally the accommodations and modifications necessary to place students with disabilities to ensure LRE. The LRE mandate requires that the general education classroom, with whatever modifications and supports are necessary, be the first placement option considered for every student with a disability. It is the responsibility of the IEP team to make a determination of placement that provides the identified academic and other services that are necessary for the student to be successful. Additionally, a student's placement in a self-contained special education classroom should not be restricted based on the child's disability or the percentage of time that the student spends outside of the classroom, as determined by the State. Instead, school districts, rather than the State Board, should determine the personnel needed to effectively respond to the needs expressed in each student's IEP.
Currently, Section 226.730 sets forth the maximum class sizes for self-contained special education classrooms based on the amount of time each student with a disability spends in a general education classroom. In addition, Section 226.730 defines "general education classroom" as one in which at least 70 percent of the students do not have IEPs (70/30 ratio), utilizes a general curriculum, is taught by an instructor holding an endorsement for "general education" and is not designated as a general remedial classroom. Staff believe that these class size limitations and class composition restrictions can diminish the ability of school districts to make decisions based on the needs of each student with a disability. Other concerns specific to the current rules are summarized below.

- The class size and class composition limitations do not consider the intensity or frequency of the services required for particular students since they pertain to all students with IEPs placed in a single classroom (except those who receive speech services outside of the general education classroom and who do not require modifications to the content of the general education curriculum).
- The class size and class composition limitations diminish administrative flexibility at the local level in implementing many education reform efforts, such as personalized learning or co-teaching strategies (i.e., use of both a general education teacher and a special education teacher).
- School districts have reported an increase in the size of some of its general education classes in order to conform to the 70/30 ratio, particularly in smaller districts or for certain types of coursework offered in departmentalized settings, such as career and technical education.
- By focusing on class sizes or the composition of the general education classroom, the current rule may pressure school districts to meet the class size numbers or class composition ratio rather than recognize the individual needs of children.

The proposed rules were published March 8, 2013, in the Illinois Register to elicit public comment; 5,523 comments were received. Additionally, approximately 50 individuals provided testimony at three public hearings held in May in Elgin, Springfield and Carbondale, and an additional 18 individuals provided comment via a webinar. A summary and analysis of the public comment is attached.

**Analysis and Implications for Policy, Budget, Legislative Action and Communications**

**Policy Implications.** Two separate policy issues arise out of this rulemaking. First, the proposed elimination of class size restrictions on self-contained special education classrooms marks the first time since the enactment of IDEA's predecessor law, *Education for All Handicapped Children's Act of 1975*, that the State Board of Education has not established maximum class sizes based upon a child's disability or his or her service level. Authorizing school districts to determine class sizes locally provides them with the freedom, but also the responsibility, to ensure that the academic environment and services provided are appropriate, align with the student's IEP and will enable him or her to meet the goals established for his or her learning.

Second, the agency promulgated the 70/30 ratio in response to the 1999 consent decree issued in the *Corey H.* matter and the court-appointed monitor’s implementation plan developed in response to that decree. These decisions required the State Board to establish districtwide targets for City of Chicago School District 299 (CPS) relative to the district's achievement of LRE. The resulting rule, while not specific to CPS, extended the agency's policy regarding these targets to all districts in the state by setting a specific student ratio of 70/30 to define a "general education classroom".
The Corey H. litigation has discouraged State Board staff from deviating from the current definition while the State Board remained subject to court's consent decree. The court dismissed the agency from the lawsuit in October 2012. As such, agency staff believe that restrictions on placement decisions set forth in rule can now be eliminated, and school districts, through the IEP process, should determine locally the accommodations and modifications necessary to place students with disabilities in the least restrictive environment. (NOTE: An exception to the maximum general education class ratio rule was later granted to CPS, reducing the ratio of general education students to students with disabilities by 10 percent in some circumstances. The proposed elimination of the 70/30 ratio, if promulgated, will not affect CPS, which will remain under the court monitor's ratio until it is released from the Corey H. matter.)

Rules specific to class sizes in self-contained special education classrooms relied on disability category until the 2007-08 school year (see Section 226.731), when they were replaced by the percentage of time a student spent in a general education setting (see Section 226.730). The agency proposed modifications to the definition of "general classroom" in 2006 and received fierce opposition from both teachers and parents who complained about inadequately prepared staff and reduction in services. As a result, the 70/30 ratio remained unchanged. Today, the pool of qualified general education educators continues to broaden due to certification and continuing professional development requirements specific to students with disabilities. Also, Section 14-2 of the School Code, enacted in 2011, emphasizes that any school district's decision to place a student with disabilities in a general education classroom cannot "interfere with the provision" of FAPE. Both of these circumstances may help to mitigate some of the negative feedback that the agency received in 2006.

Budget Implications. None.  
Legislative Action. None.  
Communication. Please see “Next Steps” below.

**Pros and Cons of Various Actions**

Removing the class size and class composition limitations will provide needed flexibility for school districts to determine student placement and class configurations based on the specific needs of students with disabilities, as articulated in their IEPs, while ensuring that the provision of FAPE for individual students is not compromised. These students' access to broader course offerings may be enhanced, particularly in certain curricular areas or departmentalized settings. The size of some classes also may be reduced, which will benefit students with disabilities, as well as general education students.

As was the case in 2006, teachers and parents both of students with disabilities and general education students expressed fears that the absence of any limit on class sizes and class composition could negatively affect students with disabilities, as well as their nondisabled peers in general education classrooms, and strain the ability of teachers to provide high-quality instruction and adequately meet the requirements of students' IEPs.

**Next Steps**

The rulemaking will be brought back to the Board for adoption at its August meeting, to include any changes made in the proposed amendments as the Board may direct.
The State Board of Education received an unprecedented number (5,523) of comments on this rulemaking. An overwhelming majority of the commenters expressed concerns about the elimination of both the composition ratio for the general education classroom (i.e., 70/30 rule) and the class size parameters for self-contained special education classrooms. All of the proponents of the rulemaking supported the elimination of the general education class composition ratio. While most also indicated that school districts, through the Individualized Education Program (IEP) process, should determine the size of self-contained special education classrooms, a number also asked that further consideration be given to modifying the current limits set forth in the rule before any final action is taken to repeal rules. The central points that the opponents and proponents raised in their submissions are summarized below.

Comments

Opposed to the Proposed Revision

Individuals who submitted letters and emails in opposition to the repeal of rules governing class size for special education classrooms and class ratios in general education classrooms passionately expressed their belief that the proposed repealer will result in "devastating", "detrimental" and "catastrophic" consequences for Illinois' educational environment. Using strong adjectives to describe the repealer, the commenters said they were "appalled" and "upset and bewildered" as to why the State Board would even consider eliminating these restrictions. The proposal, they said, was "dishonest and ill-conceived" and would cause "significant harm" and "tremendous hardship" for students, parents and teachers. Others called it a "foolish idea", one that is "shocking and irresponsible", as well as "outrageous, unprofessional and unethical" and, if adopted, would prove to be a "big mistake". As one commenter summed up: "Special education students will become another fatality of poor leadership and legislative lunacy".

In making the argument that class size and class composition limits should be retained, many of the commenters provided detailed descriptions of the challenges they face daily in general education and special education classrooms. Parents also shared anecdotes about the success that their children have had under the current limits and their concerns that the students will regress or fail to make progress if some controls are not placed on school districts. Others indicated that they did not trust school districts to make determinations of class size and class composition based on the needs of individual students without some parameters set by the state.

Given the large volume of letters and emails, each individual remark cannot be reproduced adequately in this summary. The pleas presented were often impassioned and emotional, but described unique circumstances that, in many cases, should not be generalized across the state. Some overall themes did emerge from the comments, however, and the summary is organized around those.

General. Overall, many of the commenters questioned the agency's rationale for proposing the repeal of the class size and class composition rules. Some stated their belief that the agency proposed the repealer as a way for school districts to address budget shortfalls rather than in an effort to ensure that each student with disabilities is placed in the least restrictive environment.
It is evident in most of the remarks that the commenters do not trust school districts to provide services based on the needs of individual students. Nearly all the comments mentioned that without class size and class composition limits, school districts would trim their budgets by increasing self-contained special education class sizes and the proportion of students with disabilities in general education classes. The rule's repeal will "place the financial burden of the state on the backs of our neediest students", one person said. Current class sizes, another person opined, are a "reasonable compromise between providing services to students and being able to afford to do so" and should be retained.

Some commenters indicated that the class sizes or class composition at their schools already exceed the size for self-contained special education classrooms or violates the 70/30 rule. One group reported that its members face "pressure" during IEP meetings "where district resource scarcity comes into play as students' needs are laid out". Other commenters echoed the feeling of one person, who indicated that teachers and parents "cannot count on school districts to make appropriate decisions on their own". Simply put by another commenter: "Districts will overload classes; you can bet on it". Another person countered that school districts will exercise the authority to increase class sizes not because of "malicious intent but because they do not understand the needs of students".

One interest group predicted that school districts with strong parent advocacy will "abide by sensible class sizes" in the absence of any mandated restrictions. Those districts that do not have savvy parents, however, "will not provide manageable class sizes based on the child's needs". A School Code mandated committee representing English language learners with disabilities pointed out that students whose parents do not speak English may be particularly vulnerable. Another person reported that some school districts are "filling general education classrooms to capacity (30 percent students with disabilities)" in classes in which a high number of at-risk students also are assigned. Teachers are unable to address the needs of either group of students adequately, particularly when no co-teacher or paraprofessional is available. A number of commenters cautioned that without class size and class composition limits, requests for due process hearings, and potentially instances of lawsuits, could increase.

Several of the comments stated that the elimination of the rules will "revert (education) back to the 1960s and 1970s when (students with disabilities) were ill-served and did not receive the proper amount of minutes and support" and, as result, students were being "warehoused". Others cited research (although none specific to special education) that shows that small class sizes positively affect the learning environment, as measured by variables such as more time on tasks, better grades and more time with the teacher. Several commenters questioned the research upon which the agency relied to propose the repealer.

One commenter called the rule's elimination another "obstacle" in the path of general and special education teachers. Another person said the lack of class size and class composition mandates "would add frustration to an already unfunded and never monitored system". A number of individuals urged agency staff and members of the State Board to "visit a classroom before eliminating the rule". One person even suggested that State Board members and staff "teach" in order to experience first-hand the challenges presented in many Illinois classrooms.

**Effect on Students.** Nearly every commenter noted that neither general education students nor students with disabilities will receive the individualized attention that they need to learn and progress academically if class size and class composition limits are repealed. In a general education setting, the classroom teacher "differentiates" instructional lessons based on the needs of the students, they explained. If the number of students with disabilities is increased in
these classrooms, then the teachers' attention will be paid to students with disabilities at the expense of those without. Several people noted that this consequence is "particularly bad for classrooms with low achievers", in addition to students with disabilities, as these academically at-risk students would "fall through the cracks". Conversely, another predicted that teachers will slow the pace of general education instruction so that students with disabilities "can keep up", which would be detrimental to all students in the classroom. Further, the need to maintain reasonable class sizes and class composition ratio is particularly important as school districts move to implement the Common Core State Standards, many of the commenters pointed out.

Additionally, in either the general education classroom setting or in a self-contained special education classroom, the greater the number of students with disabilities, the less likely that a teacher would be able to provide the services, accommodations and other modifications specified in students' IEPs. Without individual attention in the general education classroom, students with disabilities can become "disruptive", several commenters said, due to their frustration when help is not readily available. Other students may become "anxious in larger classes" and "act out". Class time also is disrupted as students with disabilities are "coming and going" and specialists are brought into the classroom to assist these students, some individuals mentioned. In either setting, students with disabilities "need a great deal more help with work: individual guidance and explanation; frequent repetition; accommodations to quizzes, tests and assignments; and frequent behavioral corrections and guidance" that becomes difficult to provide as class sizes and the number of students with disabilities in the general education classroom increase, a commenter emphasized. Teachers or teaching assistants also must attend to students' physical needs (diapering, shifting a student's position in a wheelchair), which further erodes the attention each individual student receives in classrooms with a greater number of students, another person said.

Commenters said that without class size limits, students' test scores will drop and some students with disabilities will leave school without graduating. With larger class sizes, it will become more challenging to ensure that all students are "college and career ready", a person noted. Another commenter implored the agency not to "throw students under the bus" by increasing class sizes and allowing for a greater ratio of students with disabilities in general education classrooms. General education classrooms will become "disproportionately special education students", many of the commenters insisted. In such cases, one person remarked, "to call these (classrooms) general education settings is dishonest and contrary to the ideas of access and inclusion".

Finally, the counsel for plaintiffs in the Corey H. litigation stated that the class size and class composition restrictions are "objective measures that ISBE needs in order to carry out its duty under state and federal law to monitor districts for compliance with IDEA's protections for students with disabilities". Without the class size and class composition limits, the attorneys argued that the agency would have to conduct "expensive and spotty site visits" to ensure that school districts are not "overloading students in unnecessarily segregated classes".

Effect on Teachers. The commenters noted that the role of teachers in both general education and self-contained special education classrooms includes more than just instruction. Teachers who provide services for students with disabilities are responsible for attending meetings specific to each child, gathering data about and completing paperwork to chart each student's progress, and ensuring that the each of the goals of the student's IEP is met – demands on a teacher's time that will be exacerbated as his or her "caseload" increases. This in turn will lead to greater "burn out", commenters said, forcing good teachers to leave the profession or others
not to consider becoming teachers at all. "Teachers are leaving the profession because they feel they cannot help students achieve their goals", a commenter explained.

Removing class composition restriction also removes a teacher's ability to provide meaningful input about the make-up of the classroom, a commenter said. She noted that while class size is a "mandatory subject of bargaining in Illinois, the student composition of a class has not been determined to be so". Another commenter called class size provisions for special education classrooms a "critical front-end protection for students and teachers", ensuring that students receive a free and appropriate education (FAPE) and teachers are not unduly overburden. As one teacher asked: "How can the special educator gather data, work one to one, provide individualized service, monitor emotionally disturbed students, watch the child who has uncontrolled epileptic seizures, chat with a student diagnosed with Asperger's syndrome because he has no friends, and, of course, teach?" The writers noted that meeting the complex mix of students' behavioral, emotional, academic and cognitive needs can be overwhelming at any given time. Increasing class sizes will "reduce special education teachers to triage staff who will be just be able to 'band-aid' but not teach", one person said.

Additionally, general education teachers said that the class or two that they are required to complete specific to students with disabilities do not adequately prepare them to "meet the needs of a large number of special education students, while at the same time meeting the needs of gifted and average students". One individual said that general education teachers are not "trained to the extent necessary to provide individualized instruction in a large classroom of students needing one-on-one attention". A general education teacher shared that she is "alone in the classroom" for 80 percent of the day with students who have learning disabilities, physical disabilities, cognitive disabilities, who are autistic, have behavioral issues or other health problems. Increasing the number of students would mean "more needs would have to be met with fewer supports", the teacher said. Another explained that it is a challenge for her to keep her three special education students "focused and on task while also making sure they don't get behind the students without special needs". Elimination of the class composition restrictions will result in "complete chaos", she predicted. In the event that class composition restrictions are repealed, the commenters stressed that teachers need "training and support and additional classroom personnel in order to provide differentiated instruction effectively". General education teachers will need professional development about addressing the needs of special education students, as well, one person noted.

A number of teachers also expressed concerns about performance evaluations and elimination of class composition restrictions. Both the evaluation of teacher practice and student growth may be adversely affected in general education classrooms that have large numbers of students with varying disabilities and abilities. Some commenters cautioned that school districts may make student placement decisions to unfairly target weaker teachers or to reward teachers considered to be "favorites". The possibility of this occurring is particularly disconcerting, they said, since evaluation results are now used to award tenure, make reductions-in-force and remove or sanction a teacher's license.

*Classroom Assistance.* Currently, the rule governing the size of self-contained special education classes allow for the maximum number of students to increase anywhere from two to five students beyond the limit if a paraprofessional is assigned to the classroom. Commenters noted the importance of the classroom teacher having this additional assistance in order to provide sufficient "behavioral and academic supports for special education students to be successful". Rather than providing this assistance, commenters fear that school districts will cease assigning aides if the rules are repealed. Another said that increasing the class size
would be acceptable when a co-teacher is assigned. Class size, therefore, should be limited "in proportion to the assistance provided in the classroom", someone concluded. One mother cited the importance of both small class sizes and the assistance of an aide in the elementary grades that she believes enabled her son eventually to attend college and work part time.

Safety Concerns. A number of commenters touched on potential hazards that could result from increasing class sizes and eliminating class composition ratios for both self-contained special education and the general education classroom. Some commenters reported that students may become disruptive or frustrated, throwing objects, biting or hitting the teacher or other students. Larger classes, one person said, result in "unsafe, unsuccessful environments" that are "unmanageable". In special classes, like science labs, shop class, art courses and home economics rooms, students may hurt themselves if sufficient oversight is not provided, others stated. When class sizes are small and a sufficient number of aides are provided, problems can be mitigated.

Several commenters also mentioned space issues as being a safety concern. They said that their rooms are small and would be unable to accommodate additional students and adults, if an aide is required under a child's IEP. This is especially true for "high-needs" students with disabilities, who may be in wheelchairs, have "standers" or mats, or require Braille or large-print readers, another person observed.

Proposed Remedies. Several commenters presented compromises to repeal of the rule, as listed below.

- Eliminate the 70/30 ratio for "special classes" but retain it for core academic areas.
- Establish a graduated scale to place students with disabilities in general education classrooms to ensure that these students are "not overrepresented" in any given classroom.
- Require that each school district set the ratio of students with IEPs to students without IEPs and to define and publish that definition, which must include the ratio, qualifications of teachers, general education classroom sizes, curriculum and other pertinent information.
- Provide monetary incentives to school districts to keep class sizes low.
- Encourage greater use of the current process for school districts to use to request deviations from the 70/30 rule.
- For general education classrooms of a certain size, require that a special education teacher be assigned.
- Take more time to study the issue and review options with stakeholders before modifying current requirements.
- Clarify the 70/30 rule or provide additional freedom to school districts about how they might provide instruction for students with disabilities; no further explanation was included.
- For students who spend 80 percent or more of their time in a general education classroom, adjust the class size ratio to 50 percent students with disabilities and 50 percent general education students. For students who are in general education classrooms for less than 40 percent of their day, require smaller classes and regular interventions.

Support for the Proposed Repealer

Supporters of the proposed repealer were unanimous in their desire to see the 70/30 rule eliminated, presenting cogent arguments that the mandated class composition ratios do not serve the best interest of students with disabilities. Many provided examples of how students with disabilities were prevented from enrolling in a particular class once the 30 percent limit had
been reached. This type of situation appeared to occur more often in certain courses, such as career and technical education classes or arts courses. Meeting the 70/30 rule is a "balancing game and scheduling difficulty", one person explained. Scheduling becomes challenging in smaller districts, which may only offer one section of a course, a commenter said. Schools also may need to move students mid-term if a student with disabilities moves into the district, the size of a class changes due to other reasons or a student later is determined eligible for special education services after the start of the school year. The 70/30 rule is "an arbitrary ratio", one commenter contended, that does not "facilitate a student with disabilities' opportunity to be with nondisabled peers". Further, a commenter expressed the belief that the 70/30 rule "reinforces the old separate but equal mentality that special educators fought against for many years".

By eliminating the 70/30 rule, a commenter emphasized that school districts are not asking for permission "to cram 30 special education students in a classroom with one teacher". The person stressed that he understood the concern of having an "excessive number of students who are developmentally delayed or read at a lower level" in classrooms with students with disabilities. He and many others assured skeptics that school districts will work in consultation with teachers, parents and school support personnel to "do what is best for kids". A superintendent who served as a special education teacher and is the parent of a student with disabilities described the 70/30 rule as a "no tolerance rule. It eliminates the district's ability to make the right decision or meet the unique needs of students". If a student's rights are being violated, then "another vehicle is needed to control" for these abuses, the superintendent said.

Several of the supporters described situations in which a student with disabilities, who did not need support in a particular subject area such as math, nonetheless was counted towards the 30 percent total when placed in that class. The 70/30 rule also does not take into account the intensity of the special education services a student receives (i.e., minutes per week of services) or the student's particular disability. In some instances, when no "slots" are available and another teacher cannot be hired, students with disabilities receive instruction in a special education classroom contrary to their IEPs, one person said. Rather than being based only on numbers, scheduling students with disabilities in appropriate classes should "benefit the overall learning and teaching environment", another commenter stated. It is incumbent upon the IEP team to "make placement decisions and identify the accommodations to allow the student to be successful in that placement," a commenter explained, "and the administration should provide necessary supports to staff to ensure that success".

School districts need the flexibility to consider "the number and type of students to be within a classroom (...) based on the make-up of the children in the class and their individual needs", a commenter pointed out. The appropriate class size, based on student needs, may vary from year to year, one individual observed. Another said relief from the 70/30 rule will result in the provision of a "variety of classroom approaches that enhance the least restrictive environment and allows for flexible grouping of students based on instructional needs". Another commenter revealed that previous support of the 70/30 rule has changed. "Inclusive programming allows for differentiated instruction and equal educational experiences for all students", the commenter said. "Special needs students perform at higher levels when exposed to the same programming as regular education students".

Removing the 70/30 rule also expands a school district's "obligation to consider placement in the general education classroom by promoting co-teaching and widening the continuum of services," explained a commenter, who has worked in states without class size restrictions. Strict adherence to the 70/30 rule results in schools increasing class sizes or not placing students with disabilities in the LRE, many of the commenters said. One person asserted that
"many of the IEP teams, including parents and students, have been forced to make inappropriate educational decisions", which work to "thwart" the development of effective transition plans. Another noted that 70/30 was not "well-received from the start" and conflicts with "IDEA for placement in the general education classroom, if that is the LRE". To sum up, one educator called 70/30 "cookie cutter decision-making that contradicts what is supposed to be individualized educational planning".

Not all of the commenters submitting letters or emails of support, however, agreed with the elimination of the class size limits for self-contained special education classrooms. Several opposed the repeal in its entirety. Others said they would support a re-examination of the limits or their elimination only if guidelines are put in place to ensure local practice complies with the requirement of FAPE in the LRE. Local guidelines, a few commenters said, should address consideration of the student's "individual academic and behavior needs within the full context of the educational services and settings available, provide the type and intensity of support services recommended by the IEP and ensure educational environments reflect a safe learning environment that is appropriately staffed and equipped with resources to address individual needs". One person urged the state to adopt "strong guidance". Another noted that the rules are a "major reason districts have been in compliance with IDEA", urging the agency to work with stakeholders in developing guidelines should the rules be repealed.

It also is important to keep in mind that "very little research" exists with evidence showing that limited class sizes will "guarantee' effective programming", a superintendent of a large special education cooperative said. She noted that the special education community in recent years has "moved away from strict categorical groupings" when making placement decisions and now examine educational settings, work to align services and assign appropriate student-to-adult ratios. She suggested that more and more, other states are eliminating "prescriptive class sizes", adding it is important Illinois adopt "regulations and practices (that) reiterate that special education is a continuum of services and supports for students with disabilities, rather than perpetuate special education as a place". State guidance, she said, needs to emphasize and support requirements under federal and state special education laws to:

- Ensure FAPE in the LRE;
- Address students' individualized academic and behavioral needs within a range of education settings;
- Provide the types and intensity of supports and services recommended in a student's IEP to address individual needs; and
- Establish safe learning environments with sufficient staff and other resources intended to address individualized needs.

Some of the commenters also mentioned budget constraints as a reason for eliminating the class size and class composition restrictions, stating that resources are being spread "too thinly and watering down services for children". One person called the mandates "costly and difficult to institute", while a representative of higher education said the restrictions are "bankrupting schools" and causing the elimination of other elective courses. The class size and class composition restrictions also necessitate that additional staff be hired, several commenters said. Overall, the reduction in class size for self-contained special education classes, one person found, affected her district "financially without a resulting improvement in the quality of the education provided or student achievement". A commenter added, however, that class size and class composition decisions should not be based solely on budget constraints but nor should it be based on "creating artificial class sizes to protect union jobs".
Analysis

The agency received 5,158 comments opposing the proposed repeal of class size and class composition limits, of which about quarter were submitted by individuals in Chicago. Opponents represented teachers, school support personnel, parents and others with an interest in educating students with disabilities. Those supporting the repeal (365 letters), on the other hand, were predominantly school administrators, such as special education directors, district superintendents, and building principals. Both sides presented compelling arguments that appear to leave little room for compromise between the two factions: opponents want the class size and class composition restrictions retained and the majority of supporters want the class size and class composition restrictions removed.

As one commenter noted, states increasingly are moving away from mandating class size for self-contained special education classrooms and composition limits for the general education classroom. An informal survey of all 50 states conducted by staff showed that only 18 states, including Illinois, had in place some type of restrictions on class size for self-contained special education classes. In addition, six states besides Illinois restricted the number of students with disabilities who could be placed into the general education classroom. Illinois's 70/30 limit appears to be the most stringent, while West Virginia limits to 30 percent the proportion of students with disabilities in academic subject areas only. Two states (Indiana and Mississippi) rely on a simple majority of general education students to define a general education classroom. The remaining three states of New Jersey, New York and Oklahoma limit the number of students with disabilities to be placed in the general education classroom to eight to 10, 12 and 10, respectively. Two of these three states (New Jersey and New York) also require that in a general education classroom where students with disabilities are placed, a co-teacher must be assigned in addition to the general education teacher.

Arguments for retaining the 70/30 rule are based on the belief that students – both those with IEPs and those without – will achieve at higher levels if the number of students with disabilities in a general education classroom is limited. Comparison of 2010-11 data from the 10 states that reported the highest number of students with disabilities receiving high school diplomas found that 80 percent of those states did not regulate general education class size. Further, states with no restrictions had a greater percentage of students with disabilities spending 80 percent or more of the instructional day in a general education classroom, which was 10 percent higher than the percentage in Illinois. Additionally, the number of cases requiring dispute resolution by a hearing officer was lower in states without regulations versus states that restricted general education class sizes. No appreciable difference was found in achievement data for math and reading among those states with restrictions and those without. In reviewing data from compliance monitoring visits of 80 districts in Illinois from school years 2006 through 2010, districts that had an increase in placing students in the general education classroom for 80 percent or more of the day reported a greater achievement increase for both students with IEPs and those without, particularly in the early grades. These data suggest that removing the 70/30 restrictions are not likely to adversely affect achievement.

Staff also agree with proponents of the rulemaking who contend that the 70/30 ratio unduly hampers their ability to place students in the least restrictive environment. Schools and IEP teams have an obligation to implement a student's IEP with fidelity, including providing all of the supports necessary for the student to achieve in the general education classroom, should that placement be identified as the least restrictive one. Both sides of the rule debate agreed that students with disabilities learn best when modeling what they observe from their nondisabled peers. These students are entitled to take general education coursework, commiserate with
their ability level, so that they are prepared to enter college or begin a career. Many times classes, such as career and technical education coursework, contribute appreciably to the potential for a student with disabilities to succeed after high school and make an appropriate transition.

Several commenters also championed the agency's class size deviation process as a workable solution for districts that want to waive the 70/30 rule. They cited the small number of requests that the agency has received as evidence that few school districts are experiencing significant problems with the limits placed on the general education classroom. For instance, in school year 2012-13, 36 school districts requested deviations for 221 classrooms, of which the agency approved 216 deviations. While staff acknowledge that few districts have taken advantage of this flexibility, they believe the process itself can be seen as a disincentive for school districts to use. The flexibility allowed under the process is granted only on a case-by-case basis for specific classrooms enumerated in the request and only granted for the duration of the school year in which the request is made. Further, any changes in the number of students with disabilities within a classroom beyond the number stated in the approved request must be reviewed by agency staff before additional placements are made. The process, while streamlined several years ago in concert with teacher unions and others, is time-consuming and laborious to complete.

It would be disingenuous for agency staff to ignore its actions seven years ago when they recommended, and the Board agreed, not to proceed with a rulemaking to more moderately modify the 70/30 rule after receiving numerous comments of concern from parents and teachers, which were similar to those raised by the opponents to this rulemaking. Nonetheless, Illinois data reveal that the state is ranked low in its provision of least restrictive environment among states nationwide, chiefly due to the limits imposed by the 70/30 rule. The court monitor for the Corey H. case commented on class size in October 1999 in his review of the agency's proposed rules developed in response to the reauthorization of IDEA. He noted that the agency, as a condition of funding under IDEA, is obligated to establish policies and procedures to ensure that students with disabilities are educated in the LRE. The monitor further noted that three factors are considered for the general education classroom; that is, a majority of the students are without disabilities, the general curriculum is utilized and the classroom is not designated as remedial. In eliminating the 70/30 rule, the agency is providing school districts with local flexibility to interpret how these three factors work together with the student population of the school and a student’s LRE needs.

As one commenter noted, there is little research-based evidence showing that strict adherence to class size limits or class composition ratios ensures that each student with disabilities achieves his or her highest potential nor do restrictions make school districts more accountable for fully and properly providing the supports and accommodations identified in students' IEPs. Other factors, such as the age of students, the nature and severity of their disabilities and their needs for individualized instruction and services, will dictate to a large extent both the size of the class in which a student is placed and its configuration. Additional considerations when determining the number of students who can be served effectively in a given special education class include other claims on the assigned teacher's time and attention, such as paperwork and IEP meetings. School districts and IEP teams must be cognizant of these factors and how they influence the provision of services for students with disabilities when making class size and class composition decisions.

It is imperative that school personnel, in concert with teachers and school support personnel, carefully assess the specific characteristics of the local setting (e.g., needs of students with
IEPs, including accommodations and modifications, staff supports and professional development opportunities with regards to supporting the needs of students with disabilities; other resources necessary for successful LRE placements) before making placement determinations. Even absent class size and class composition rules, school districts must adopt a plan specifying limits on the work load of its special educators so that all services required under students’ IEPs, as well as all needed ancillary and support services, can be provided at the requisite level of intensity (see Section 226.735 of rules governing Special Education). The plan must be developed with any employees who would be affected and their exclusive collective bargaining representatives, if any. School districts must analyze the activities of their special educators and develop a plan that addresses individualized instruction, consultative services and other collaboration among staff members, attendance at IEP meetings and other staff conferences, and other paperwork and reporting for which staff have responsibility. While these plans do not specifically address class size and class composition, they do help to focus the attention of administrators, teachers and other personnel on the academic and additional services that are necessary for students to be successful, as well as the staff required to faithfully deliver the instructional and support services identified.

School districts should adhere to the premise that the needs of each student are paramount when making placement decisions and work with the IEP team to ensure any accommodations and modifications identified are appropriate and will contribute to the student's achieving at the best of his or her capabilities. Safeguards, such as the complaint process, dispute resolution and due process hearings, are available for parents to use in cases when placements violate FAPE or do not ensure the LRE. School districts are likely to avoid the threat of costly litigation and are urged to work with teachers, parents and other members of the IEP team to provide an appropriate education for each student with disabilities.

If the class size and class composition rules are repealed, school districts will still be subject to the requirements of IDEA and its implementing regulations, as well as additional requirements set forth in Part 226. Agency monitoring will continue to be used to assess the placement determination practices of school districts and how those practices are justified according to IDEA and align to the needs of students in the educational setting. Further, without the regulations upon which school districts have long relied, it will be incumbent upon the agency to review and strengthen, as necessary, its current guidelines for best practices and student placement. More specific guidance will be developed to help districts make informed and compliant decisions regarding resources allocation, student needs, grouping of students in various age spans and consideration of the severity of disabilities, to name a few.