

September 29, 2009

Ms. Susan Haberstroh
Education Associate
Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

RE: 13 DE Reg. 353 [DOE Proposed Child Nutrition Regulation]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE) proposal to amend its child nutrition regulation published as 13 DE Reg. 353 in the September 1, 2009 issue of the Register of Regulations. Specifically, the proposed amendments would require districts and charter schools to provide an electronic version of their child nutrition policies and any revisions to the DOE. As background, the current regulation requires districts to have a child nutrition policy which meets USDA standards, ensures that students have adequate time to eat breakfast and lunch, and encourages children to select healthy diets. See 13 DE Reg. 353, 354 (September 1, 2009). For perspective, SCPD is attaching the cross referenced USDA standards [7 C.F.R. §§ 210.10 and 220.8] which contain the child nutrition regulations for breakfast, lunch, and snacks. Council has the following observations.

First, there is a technical oversight in the amendment. Although charter schools are required to submit their policies to the DOE under new §2.0, §1.1 has not been changed to require charter schools to actually adopt a nutrition policy. This could be easily corrected by inserting "and charter school" between the words "district" and "shall" in §1.1.

Second, attached please find a set of articles published during the last 5 years which address nutrition standards in schools. The January 9, 2004 article highlights the variation among Delaware school districts in this context. For example, it notes that the Capital School District entered into an 8 year contract with Coke "to sell Coca-Cola products in its cafeterias, teachers' lounges and hallways and at athletic events." In 2005, the beverage industry agreed to voluntary restrictions on sales of soft drinks in schools. In 2006, several U.S. food companies agreed to sell only treats that are low in fat, sugar and calories in school vending machines. The December 18, 2007 News Journal article highlights a potential shortfall with the DOE's proposed regulation which incorporates USDA standards:

While federally subsidized school lunches must meet U.S. Department of Agriculture nutritional standards, the same regulations don't apply to a la carte foods. And the USDA has no authority to regulate food sold outside the cafeteria, such as sugary sodas and fruit drinks or fat-laden candy bars hawked in school vending machines.

Delaware has no standards of its own, the main reason why the Center for Science in the Public Interest gave the state an "F" last month in its School Food Report Card. No states earned an "A", though Kentucky and Oregon each received an A-. Six states got a B+, nine earned a B or B-, six had C's; seven received D's; and the remaining 20 failed either for having no policies or, in CSPI's view, very weak policies.

CSPI found only 11 states have comprehensive food and beverage standards that apply to the entire campus all day for all grade levels.

In a statement announcing the findings, CSPI Nutrition Policy Director Margo Wootan complained that a majority of states – Delaware included – still rely on USDA's "outdated" school nutrition standards: "Those national standards limit only the sale of jelly beans, lollipops and other so-called "foods of minimal nutritional value." Those standards don't address calories, saturated and trans fat, sodium or other key nutrition concerns for children today."

For the above reasons, SCPD recommends that the DOE consider developing more ambitious and comprehensive nutrition standards than proposed by the new regulation.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulation.

Sincerely,

Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

cc: The Honorable Lillian Lowery
Ms. Jean Allen
Ms. Martha Toomey
Ms. Paula Fontello, Esq.
Ms. Mary Cooke, Esq.
Ms Jennifer Kline, Esq.
Mr. Charlie Michels
Mr. Brian Hartman, Esq.
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