



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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October 25, 2013

Ms. Susan K. Haberstroh, Ed.D.
Department of Education
35 Commerce Way – Suite 1
Dover, DE 19904

RE: 17 DE Reg. 361 [DOE Emergency School Health Tuberculosis Control Program Reg.]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to adopt an emergency regulation regarding its School Health Tuberculosis Control Program. The emergency regulation was published as 17 DE Reg. 361 in the October 1, 2013 issue of the Register of Regulations. As background, new school staff are currently required to submit TB test results from a test administered within the past 12 months during the first 15 working days of employment. However, the Division of Public Health advised the DOE on September 5 that there is a nationwide shortage of a component of the approved tuberculin skin test. Therefore, the DOE is issuing revised standards which are intended to remain in effect for 120 days from September 16, 2013. SCPD has the following observations.

First, in §2.1.3.3, the reference to “notification to the Department of Public Health” should be amended to read “notification from the Division of Public Health”.

Second, the regulation does not address an individual who actually obtains qualifying TB test results (e.g. the new employee obtains the test in a surrounding state or a part-time school nurse obtains the test as part of employment in a health facility). Although §2.1.3.3. refers to the new regulatory standard as an “alternative procedure”, the regulatory standard is not written in the alternative. Section 2.1.3 literally would not allow a new employee to qualify as a “cleared” employee based on actual submission of test results. This oversight is easily resolved by substituting “may” for “shall” in §2.1.3 AND amending §2.1 by adding the following introductory phrase - “Subject to §2.1.3,”. This would also resolve the literal conflict between §2.1 and §2.1.3.

Third, although the order adopting the regulation recites that it is “effective for 120 days from the date of execution”, the actual regulatory text includes no firm expiration date. This may

result in confusion in implementation. For example, how will schools know that the onset of the “20 working day” period has been triggered by an “unknown” notice from DPH to DOE. One option would be to amend §2.1.3 as follows: “~~During the~~ Given a shortage of purified derivative (PPD) and until such time as sufficient quantities of PPD are available in Delaware, between September 16, 2013 and January 15, 2014, ... “In the alternative, a sentence could be added at the end of §2.1.3.3 as follows: “The Delaware Department of Education will notify public schools of the receipt of the Division of Public Health notification under this section.”

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

Sincerely,



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

cc: The Honorable Mark Murphy, Secretary of Education
Dr. Donna Mitchell, Professional Standards Board
Dr. Teri Quinn Gray, State Board of Education
Ms. Mary Ann Mieczkowski
Ms. Paula Fontello, Esq.
Ms. Terry Hickey, Esq.
Ms. Ilona Kirshon, Esq.
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
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