



STATE OF DELAWARE  
**STATE COUNCIL FOR PERSONS WITH DISABILITIES**

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October 29, 2014

Ms. Tina Shockley, Education Associate  
Department of Education  
401 Federal Street, Suite 2  
Dover, DE 19901

RE: 18 DE Reg. 281 [DOE Proposed Eligibility & IEP Reading Interventions Regulation]

Dear Ms. Shockley:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to adopt some discrete changes to its IEP standards to implement S.B. No. 229 which was enacted in the summer of 2014. The proposed regulation was published as 18 DE Reg. 281 in the October 1, 2014 issue of the Register of Regulations. SCPD has the following observations.

First, the DOE is proposing a few edits to eligibility standards. See §§6.11 and 6.12.4. The change to §6.12.4 is problematic:

6.12.4 Age of Eligibility: The age of eligibility of children identified as under Moderate Intellectual Disability and Severe Intellectual Disability Categories shall be from the third birthday through ~~20 years~~, inclusive-21 years of age.

The revision is inconsistent with statutory law:

(1) "Child" means a person of 3 years of age, or an earlier age if otherwise provided in this title, until the receipt of a regular high school diploma or the end of the school year in which the person attains the age of 21, whichever occurs first.

Title 14 Del.C. §3101. All of the DOE eligibility regulations incorporate the statutory standard for termination of eligibility. See, e.g., 14 DE Admin Code 925, §§6.6.3, 6.13.5, and 6.17.5. The standard is also reinforced in 14 DE Admin Code 925, §6.5.4:

6.5.4. Exit Criteria: A child's eligibility for special education and related services shall terminate when:

6.5.4.1 the child reaches his or her 21<sup>st</sup> birthday. A child with a disability who reaches his or her 21<sup>st</sup> birthday after August 31 may continue to receive special education and related services until the end of the school year, including appropriate summer services through August 31; or

6.5.4.2 the child graduates from high school with a regular high school diploma. As used in this subsection, regular high school diploma does not include a GED;...

Based on the above analysis, the proposed regulation should be amended as follows:

6.12.4 Age of Eligibility: The age of eligibility of children identified as under Moderate Intellectual Disability and Severe Intellectual Disability Categories shall be from the third birthday through 20 years, inclusive ~~[21 years of age~~ **until the receipt of a regular high school diploma or the end of the school year in which the student attains the age of twenty-one (21), whichever occurs first.**

Second, §24.0 is being revised to add the following considerations when developing an IEP:

24.2.7. In the case of any child with limited reading proficiency, consider the reading services, supports and evidenced based interventions as those relate to the child's IEP;

24.2.7.1. For a child who is not beginning to read by age seven, or who is beyond age seven and is not yet beginning to read, enumerate the specific, evidence-based interventions that are being provided to that child to address the child's inability to read.

This language is generally consistent with H.B. 229. However, it would be highly preferable to also include a reference to "prompt" the IEP team to address ESY as contemplated by H.B. 229. SCPD recommends adoption of the following standard:

24.2.7. In the case of any child with limited reading proficiency, consider the reading services, supports and evidenced based interventions as those relate to the child's IEP;

24.2.7.1. For a child who is not beginning to read by age seven, or who is beyond age seven and is not yet beginning to read, the IEP shall:

24.2.7.1. Enumerate the specific, evidence-based interventions that are being provided to that child to address the child's inability to read; and

24.2.7.2. Provide for evidence-based interventions through extended school services (ESY) absent a specific explanation in the IEP why such services are inappropriate.

The omission of the above §24.2.7.2 from the proposed regulation is extremely problematic since it is not "captured" by any other DOE regulation and is explicitly

required by H.B. No. 229. The effect is that IEP teams (and parents) will be unaware of the presumption that interventions be provided during the summer unless the contrary rationale is documented in the IEP. It is logical to include this provision within §24.0. Compare §24.2.3 (IEP must provide for Braille instruction unless IEP team determines Braille inappropriate).

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

Sincerely,



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

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