



STATE OF DELAWARE  
**STATE COUNCIL FOR PERSONS WITH DISABILITIES**  
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February 22, 2016

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

RE: 19 DE Reg. 721 [DOE Proposed Meeting Minutes & Prior Notice Regulation]

Dear Ms. Shockley:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to amend its regulations regarding IEP meeting minutes and prior written notice for proposed changes. The proposed regulation was published as 19 DE Reg. 721 in the February 1, 2016 issue of the Register of Regulations. SCPD has the following observations.

Meeting Minutes

First, the first sentence of existing §1.5 is revised as follows:

A parent, a parent's authorized representative, or any public agency conducting a meeting, review or conference may take minutes of the meeting, review or conference concerning a child with a disability's free and appropriate public education.

The underlined limitation is problematic since the regulation is "underinclusive". State law contemplates maintenance and access to records not only related to "a free, appropriate, public education" but also "the identification, evaluation and educational program and placement" of a child. See 14 Del.C. §3130(a). For example, if a school conducts a child study team meeting to review results of an initial evaluation of a student, the parents or school may wish to take minutes of the meeting. Since the child is not yet identified, the meeting does not relate to a "FAPE" but does relate to an evaluation to determine eligibility.

The underlined limitation is also inconsistent with 14 DE Admin Code 926.1.3 which is does not

limit the subject of meetings to a “FAPE”:

1.3. Parent participation in meetings. The parents of a child with a disability shall be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

The DOE should either: 1) delete the underlined language; or 2) conform the regulation to encompass both prongs of 14 Del.C. §3130(a). Since §1.3 already describes the subjects of a meeting, it would be preferable to simply delete the underlined language in §1.5.

Second, the DOE proposes to add the following sentence to §1.5:

If initiated by the public agency parents must be offered a digital copy.

This sentence presents two (2) concerns.

A. Since there should be no cost in providing a digital copy, it would be preferable to revise the reference to “...offered a free digital copy”.

B. State law (14 Del.C. §3130) and §1.5 authorize minutes to be taken by stenographer. If a school opts to have a stenographer take minutes, or the school prepares a “paper” copy of the minutes based on an electronic record, the parent could opt to solicit a “paper” copy. The implication of the underlined sentence is that parents would be exclusively limited to a digital copy.

The DOE could consider the following revision:

If initiated by the public agency, parents must be offered, at the parents’ discretion, a [free] digital copy [or, subject to §1.2, a copy in written format].

“Written format” envisions a “paper” copy. See Title 1 Del.C. §302(23).

#### Prior Notice

First, the revision to §3.2.8 is grammatically infirm and narrower than the applicable statute. Consistent with 14 Del.C. §3134(1), consider the following: “a full, written explanation of all of the procedural safeguards available to parents under state or federal law and regulations.” It is not sufficient to recite that a summary is “available” when the State statute requires the notice to include the explanation of procedural safeguards.

Second, §3.2.6 is “underinclusive” since it is limited to IEP teams. See 14 Del.C. §3134(2). The term “agency” should be substituted for “IEP team”.

Third, the “authority” section at the end of §3.0 should be amended to include 14 Del.C. §§3130, 3133, and 3134.

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 Steven Godowsky, Ed.D, 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. Kathleen Geiszler, 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  
Governor’s Advisory Council for Exceptional Citizens

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