



DISABILITIES LAW PROGRAM

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MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman

Re: Regulatory Initiatives

Date: January 4, 2013

I am providing my analysis of eleven (11) regulatory initiatives in anticipation of the January 10, 2013 meeting. Given time constraints, my commentary should be considered preliminary and non-exhaustive.

1. DMMA Final ICF/MR & LTC Facility Reimbursement Regulation [16 DE Reg. 781 (1/1/13)]

The SCPD and GACEC commented on the proposed version of this regulation in November, 2012. A copy of the GACEC's November 20, 2012 letter is attached for facilitated reference.

The Councils identified both "pros" and "cons" to the initiative. On the one hand, the Councils noted that providing more funds to facilities could result in higher quality of care and an incentive to accept "Medicaid" patients. On the other hand, reasonable persons might question whether the extra payments might undermine the "movement" towards promoting community-based service options. Weighing the competing considerations, the Councils endorsed the regulation. The Division has now acknowledged the endorsements and reaffirmed its commitment to "promoting long term services and supports in the community." At 783.

I recommend no further action.

2. DOE Final Special Education Teacher Regulation [16 DE Reg. 766 (1/1/13)]

The SCPD and GACEC commented on the proposed version of this regulation in November, 2012. A copy of the GACEC's November 14, 2012 letter is attached for facilitated reference.

The Councils endorsed the regulation with no suggested changes. The DOE has now adopted a final regulation which conforms to the proposed version. The DOE also notes that it received no comments on the regulation. I believe this is due to the Councils having inadvertently identified the regulation as “Early Childhood Teacher Regulation” rather than “Exceptional Children Special Education Teacher Regulation”. This was based on the same inadvertent error in my November, 2012 P&L memo. However, the citation and the text of the commentary clearly addressed the latter regulation. This resulted in the DOE interpreting the endorsements as applying to the “Early Childhood Teacher Regulation” which the Councils did not address. See 16 DE Reg. 755 (1/1/13).

I recommend no further action.

3. DOE Final Teacher of Students with Autism/Severe Disabilities Reg. [16 DE Reg. 767 (1/1/13)]

The SCPD and GACEC commented on the proposed version of this regulation in November, 2012. A copy of the GACEC’s November 14, 2012 letter is attached for facilitated reference.

First, the Councils identified several concerns with the “definitions” section and proffered suggested amendments. In response, the PSB recites that “the definitions have been amended as suggested.” At 768. However, the published regulation then recites that no changes have been made from the proposed version. At 769. Moreover, the link to the new regulation leads to an unrevised version. Id.

Second, the Councils questioned adoption of new terminology, i.e., “severe intellectual disability”. The Councils questioned whether the term was intended to cover students with moderate intellectual disability (formerly moderate mental retardation). The PSB responded that it has not narrowed the scope of the regulation. At 768. Although not entirely clear, I infer that teachers of students with moderate intellectual disabilities are not covered by the regulation.

Third, the Councils identified an anomaly in the context of the “highly qualified teacher” regulation. The PSB responded that the teachers are expected to be certified under both 14 DE Admin. Code §§1571 (general special education teacher) and 1573 (teacher of students with autism/severe intellectual disability). Thus, Section 1573 is ostensibly not a “stand alone” certification. This is not literally addressed in the regulation, i.e. there is no requirement in Section 1573 that the teacher also be certified under Section 1571. This represents poor drafting and may lead to confusion.

Fourth, the Councils endorsed the addition of “APA” course work to training standards. The PSB acknowledged the endorsements.

Fifth, the Councils requested clarification of which teachers would be required to have the “Section 1573” certification. The PSB responded as follows:

The Councils expressed concerns regarding the application of the regulation to Delaware educators. Under the amendments, the certification is required for all educators within public schools teaching within the Delaware Autism Program or educators with a primary assignment teaching children with autism or children with severe intellectual disabilities. (See section 1.0). The PSB found that the past regulation was not consistently applied throughout the state and the amendments were to clarify that this certification is mandatory for the above referenced educators. The certification is currently not required for an educator who is not part of the Delaware Autism Program and has some students with autism in a regular classroom setting. In that case, it is anticipated that the individual students' needs are addressed by an Individual Education Plan (IEP) with specific services appropriate to the individual student. The PSB will be monitoring the changes to the application of this regulation and will proceed with an amendments as necessary.

At 768. This makes no sense. First, it suggests that DAP students do not have individualized programs based on an IEP. Second, it means that it's acceptable to have less qualified teachers of "mainstreamed" students with autism or severe intellectual disabilities. Parents can either opt to have their children educated in more segregated settings with very capable teachers or non-segregated settings with less capable teachers. Third, there is no "bright line" between having a "primary assignment teaching students with autism/severe intellectual disabilities" and teaching "some" covered students. If a teacher has 30%, 40%, or 50% of a class with students with autism/severe intellectual disabilities, does she need a Section 1573 certification? If the purpose of the regulation is to clarify its application given a lack of uniformity, the revisions are ineffective.

I recommend that the Councils advise the PSB and Register of Regulations of the discrepancy identified in the "First" paragraph above. The GACEC may also wish to share the above observations with the DOE special education director and/or DSEA.

4. DOJ Proposed VCAP Funeral & Burial Award Cap Regulation [16 DE Reg. 719 (1/1/13)]

The Victims Compensation Assistance Program (VCAP) uses a combination of federal and State funds to offset "hardships imposed upon the innocent victims of certain crimes and the families and dependents of those victims." See Title 11 Del.C. §9001. Compensation is generally limited to victims of "violent" crimes, including domestic violence and DUI. The VCAP statute includes caps on certain forms of compensation (e.g. crime scene cleanup - \$1,000; temporary housing - "\$1,500; moving expenses - \$1,000). See Title 11 Del.C. §9002(9). The VCAP is authorized to cover funeral/burial costs:

(2) In the event of a death caused by a crime of violence, any person who legally or voluntarily assumes the obligation to pay the medical or burial expenses incurred as a direct result of such injury and death shall be eligible to file a claim with the Agency. The provision for payment in case of death shall not apply to any insurer or public entity.

Title 11 Del.C. §9009(2). There is no statutory cap in this context. Instead, the current VCAP regulation [11 DE Admin Code 301, §25.0] establishes an \$8,500 cap:

25.0 Burial Awards

The aggregate award for funeral and burial shall not exceed \$8,500.

The VCAP proposes to reduce the \$8,500 cap to \$5,000. The VCAP Advisory Council supported this initiative for a variety of reasons.

First, on an annualized basis, VCAP claims are exceeding projected income for the VCAP. The VCAP therefore must prioritize resources or risk inability to pay claims. See, e.g., attached December 10, 2012 News Journal article.

Second, consistent with the attached research compilation, Delaware's \$8,500 cap is higher than every state in the Nation with the exception of West Virginia. The most common cap (adopted by 24 states, including Pennsylvania and N.J.) is \$5,000.

Third, in practice, claims for funeral/burial expenses were predominantly close to the \$8,500 cap, suggesting little restraint.

I recommend endorsement.

5. DOE Proposed Driver Education Regulation [16 DE Reg. 691 (1/1/13)]

The Department of Education proposes to revise its driver education regulation to conform to recently H.B. No. 264 enacted in April, 2012. A copy of the legislation is attached for facilitated reference. In a nutshell, the legislation is designed to provide flexibility for IDEA-classified students in enrollment in driver education courses. The material authorization is as follows:

(b) A student who is receiving special education services under an active student's individualized education plan (IEP) will be authorized until age 21 to complete their driver education certification through a State-approved driver education course. Pursuant to Department of Education regulation, the student may be authorized to subsequently enroll in another driver education course if the student fails the driver education course during the regular school year.

I have the following observations on the proposed regulation.

First, in §1.1, I recommend inserting "and related services" after the term "specialized instruction". For example, a student may need special hand controls or vehicle modifications to be successful. Such assistive technology could be considered either specialized instruction or a related service. Moreover, a student may need OT services to address seating, gripping, and access to controls in a vehicle.

Second, in §1.1.3, I recommend deletion of the term "for taking the course one additional time". My rationale is as follows:

A. The relevant IDEA regulation requires that special education and related services be provided “at public expense” and “without charge”. See 34 C.F.R. §300.17. The State statute and regulation specifically envision IEP team involvement in students’ participation in driver education course work. IEP-included education must be free.

B. The statute does not literally limit an IDEA-identified student to retaking driver education only once. The student is simply authorized to enroll in another course. See also §1.1, referring to “multiple opportunities to take the driver education course”. Interpreting the statute as limiting an IDEA-classified student to only two attempts to pass a driver education course is precluded by federal law. Special education must be individualized and enrollment in courses which are part of “FAPE” cannot be “capped”.

C. OSEP interpretations support enrollment in a third or fourth driver education class with IEP team approval at no charge. OSEP allows parents to be charged minor incidental or “maintenance fees” (e.g. for art, chemistry, or lab supplies). See attached OSEP Policy Letter to Anonymous, 20 IDELR 1155 (October 8, 1993). OSEP does not permit parental liability for tuition costs. See attached OSEP Policy Letter to Neveldine, 22 IDELR 630 (January 25, 1995). The cost of a driver education course is conceptually a tuition charge, not an incidental fee.

I recommend sharing the above observations with the DOE and SBE. DVR may also have an interest. Finally, the comments could be shared with the State Transition Task Force for Emerging Adults with Disabilities established by SCR 34.

6. DOE Proposed Cyberbullying Regulation [16 DE Reg. 694 (1/1/13)]

In October, the Department of Education published a proposed Cyberbullying regulation in implementation of enactment of S.B. No. 193 in 2012. The SCPD and GACEC commented on that proposed regulation. A copy of the October 17, 2012 GACEC letter is attached for facilitated reference. Rather than adopt a final regulation, the DOE is now publishing a revised proposed regulation. I have the following observations and recommendations.

First, I recommend that the Councils reiterate Pars. 2 and 3 from the GACEC letter for background on its commentary.

Second, the Councils submitted the following (italicized) comments on §2.3. The January version of the regulation contains an identical section so the comments can be reiterated.

First, §2.3 recites as follows:

The place of origin of speech otherwise constituting cyberbullying is not material to whether it is considered cyberbullying under this policy, nor is the use of school district or charter school materials.

At a minimum, the word "communication" should be substituted for "speech". The Delaware Bullying Prevention Association website [www.bullyprevention.org/aboutdbpa.html] defines cyberbullying as including "denigration: spreading information or pictures to embarrass". The term "speech" may not cover publication of a hostile or embarrassing photo and §2.1 uses the broader term, "communication". For the same reason, the term "communication" should be substituted for the term "speech" in §2.2.

However, the premise that the place of origin is completely immaterial is problematic. If the origin is actually misuse of a classroom computer, it is intuitive that the conduct can be more closely regulated. Consider the following alternatives:

Communication may qualify as cyberbullying irrespective of place of origin and irrespective of use of school district or charter school materials.

OR

Communication may qualify as cyberbullying regardless of both place of origin and lack of reliance on school district or charter school materials.

§2.1: Third, in October, the Councils objected to an "overbroad" definition of Cyberbullying in

Second, the term "unpleasant" in §2.1 is "overbroad". Communication may be "unflattering", "not pleasant", or "negative" without rising to the level of bullying. Moreover, the regulation should preferably conform to the statutory definition of bullying in Title 14 Del.C. §4112D(a). To the extent the regulatory definition conflicts with the statutory definition (which includes "electronic" actions), the regulation is subject to judicial invalidation. Moreover, the regulation omits the concept of "intention" which is contained in the statute. For these reasons, the Department could consider the following substitute:

Cyberbullying means the use of uninvited and unwelcome electronic communication directed at an identifiable student or group of students intended to cause embarrassment, humiliation, fear, or emotional harm.

The terms "embarrass", "humiliating", "fear", and "emotional harm" are contained in the statute. The term "unpleasant" is not in the statute.

The January version removes the term "unpleasant". However, it still omits the concept of "intention" which is explicitly included in the statute:

(a) Definition of bullying. – As used in this section, “bullying” means any intentional written, electronic, verbal or physical act or actions against another student, school volunteer or school employee that a reasonable person under the circumstances should know will have the effect of:...

Title 14 Del.C. §4112D(a) [emphasis supplied] This could be easily corrected by inserting “intentional” prior to “use of uninvited...” in the first line of §2.1.

Fourth, in October, the Councils objected to adoption of a categorical rule that, regardless of privacy settings, use of prevalent social media was deemed automatically available to a broad audience within the school community. The January version “softens” the categorical rule by converting it to a “presumption”. This is an improvement. However, it still contemplates presumptive “guilt” or “culpability” regardless of “privacy settings or other limitations on those postings”. It would be more logical to establish a presumption of dissemination to the school community only if at least 1 student in the school community has access to the social network posting. If the only individuals with access to the posting are parents and relatives, the validity of the presumption is highly questionable. Policies restricting free speech should be restrained and “tailored” in scope.

Fifth, in October, the Councils included the following (italicized) recommendation:

Fourth, the regulation only covers student-student bullying. Consistent with the attached article, “When the Bully Is the Teacher” (September 12, 2011), research confirms that teacher bullying of students is “a common problem” with 93% of teachers and students surveyed reporting that teacher bullying is occurring in schools. The bullying statute [Title 14 Del.C. §4112D] is not limited to student-student bullying and the regulation could be improved by addressing teacher-student bullying.

The January version does not address teacher-student bullying. The Councils may wish to reiterate the observation.

I recommend sharing the above commentary with the DOE, SBE, Lt. Governor, Attorney General, and ACLU. It would be preferable to share the commentary with the ACLU by mid-January so it has the benefit of the Councils’ perspective in preparing its own remarks.

7. DOE Proposed Administration of Medications & Treatments Reg. [16 DE Reg. 696 (1/1/13)]

The Department of Education proposes to adopt a revised regulation covering medications and treatments. The “Synopsis of Subject Matter of the Regulation” provides the following overview:

The amendments include the addition of definitions, clarification of the process for the administration of medications and treatments, and also changes that reflect recent amendments to 24 Del.C. Section 1921(a)(17) relating to who may assist students with medications and when they may do so.

At 696.

The latest legislation revising §1921(a)(17) is the attached S.B. No. 257 signed by the Governor on July 18, 2012.

The regulation is comprehensive and logical in format. I have only a few observations.

First, §1.2.1 requires the prescription medication to be provided to the school “in the original container”. This requirement could present some practical problems if a medication must be supplied to more than 1 provider (e.g. school and after-school program). Moreover, the State criminal statute requiring that prescription medications be kept in an original container was repealed a few years ago. On the other hand, a pharmacy will generally provide a second labeled container on request. Moreover, providing the original container with label reduces prospects for medication errors. Therefore, I do not recommend objecting to the requirement. However, it would be preferable if schools alerted parents that they should obtain a second labeled container from the pharmacy when filling prescriptions. Many parents may be unaware of this option.

Second, in §3.0, insert a comma after the word “Treatments”.

Third, in §5.1, the grammar is incorrect. At a minimum, the word “who” should be inserted between “employees” and “are”. However, since the statute does not “authorize” all educators and employees to assist with medication, I recommend substituting “employees who qualify under 24 Del.C. §1921(a)(17) to assist a student...” This terminology is consistent with language used in §5.1.2.

I recommend sharing the above observations with the DOE and SBE.

8. DLTCRP Prop. LTC Transfer, Discharge & Readmission Reg. [16 DE Reg. 710 (1/1/13)]

The Division of Long Term Care Residents Protection proposes to adopt some discrete revisions to its standards covering transfers and discharges from long-term care facilities. Parenthetically, the Division shared a pre-publication draft with the DLP resulting in some minor corrections in numbering and the addition of §3.5.4.5.

I have the following observations.

First, in §2.0, there is a benign revision to the definition of “transfer and discharge”.

Second, §§3.5 and 4.5 now require facilities to provide more specific information to residents about the process and timetable to request a hearing. Sections 3.5 and 4.5 also explicitly require submission of hearing requests to the Division. This approach was previously recommended by the Councils but rejected. See 16 DE Reg. 296, 301-302, Comment 19 (September 1, 2012).

Third, §3.5.4.5 clarifies that the State hearing system does not supplant resort to other grievance and review systems. See attached Quality Insights Delaware materials.

Fourth, §5.2 provides important protections to maintain residency during the pendency of proceedings. However, I recommend two (2) minor edits.

A. Revise the first sentence as follows: “No facility...has been provided or the request has been denied or dismissed pursuant to 5.3.

B. In the second sentence, capitalize “Ch. 11”.

I recommend a strong endorsement.

9. DLTCRP Prop. Home Health Crim. History Check & Drug Test Reg. [16 DE Reg. 717 (1/1/13)]

The Division of Long-term Care Residents Protection proposes to adopt a new set of comprehensive standards covering criminal history checks and drug testing for home health agencies. The changes are motivated, in part, to incorporate the role of the new “Background Check Center” (BCC) established by S.B. No. 216 enacted in July, 2012. The changes are also intended to conform to 2012 EEOC guidance on reliance on arrest and conviction records to disqualify individuals from employment. See §8.3.

I have the following observations.

First, in §3.0, definition of “criminal history”, the Division includes the following sentence: “It shall be limited to convictions and arrests for which no disposition is available.”. This is problematic. The EEOC guidance (incorporated by reference at §8.6) discourages reliance on arrest records by employers. Moreover, the incidence of arrest records without disposition is high:

A 2006 study by the DOJ/BJS found that only 50% of arrest records in the FBI’s III database were associated with a final disposition.

At 5. Routinely including a high volume of arrest records without disposition manifestly violates a basic precept of the EEOC guidance.

Second, in §3.0, definition of “Division or DLTCRP”, consider adding “and home health agencies” to the end since this is the subject of the regulation.

Third, §5.2 envisions the BCC continuously monitoring employees in its Master List for both arrests and convictions. The BCC is then authorized to use its discretion in sharing arrest information with the employer. Consistent with the above discussion under “First”, this is not consistent with the EEOC guidance. The EEOC provides the following characterization of arrest records:

The fact of an arrest does not establish that criminal conduct occurred. Arrests are not proof of criminal conduct. Many arrests do not result in criminal charges, or the charges are dismissed. Even if an individual is charged and subsequently prosecuted, he is presumed innocent unless proven guilty.

At 12.

Fourth, §5.2 contains the following sentences:

DLTCRP will monitor the charge until there is a disposition. When the disposition is known, DLTCRP will inform the Employer of the conviction.

This incorrectly presumes that all dispositions will be convictions. Consider substituting “any conviction” for “the conviction”.

Fifth, the term “discrete” should be substituted for “discreet” throughout the document. It is incorrectly used in §§6.3, 6.4, 9.2, and 10.3.

Sixth, in §6.4, there is a plural pronoun (their) with a singular antecedent (employee). Consider substituting “inclusion” for “their place”.

Seventh, §7.1 states as follows:

7.1. Before hiring an Applicant, employers are required by law to obtain from prior employers and to provide to prospective employers Service Letters which provide specific information as required by the Department of Labor. 19 Del.C. §708.

This is not entirely accurate. Title 19 Del.C. §708(b)(6) authorizes conditional employment based on exigent circumstances. At a minimum, consider inserting “generally” prior to “required”.

Eighth, §7.2 recites as follows:

When an employee hired after the effective date of the BCC is terminated, the employer shall promptly complete a Service Letter which will be stored by the BCC and available to the next prospective employer. The Service Letter shall expire after 5 years.

While this employer requirement may be conceptually sound, it may lack statutory authority. Title 19 Del.C. §708(b)(5) contemplates employers maintaining the Service Letters and honoring requests from prospective employers for the Service Letters pertaining to applicants. Violations of the law result in civil penalties. I could not locate any statute which permits an employer to simply send the Service Letters to the BCC which would then respond to employer requests for the Letters.

Ninth, in §8.1, first sentence, the word “to” should be inserted between “authorized” and “furnish”. Moreover, there are words missing from the second “sentence” which lacks a predicate. Alternatively, based on the analogous §8.1 in the proposed Criminal History Record Checks and Drug Testing regulation [16 DE Reg. 716 (1/1/13)], the second “sentence” could be deleted.

Tenth, in §8.2, the 15-year period for abuse/neglect convictions seems a bit long. By analogy, felony theft convictions have a 10-year disqualifying period. Consider a shorter period for misdemeanors involving abuse/neglect. The conviction information would still be disclosed pursuant to the criminal background check but there would not be a categorical , “no-exceptions” disqualification from employment if the 15-year standard were modified.

Eleventh, in §8.3.1, consider substituting “inform” for “informs”. There is also a plural pronoun (them) with a singular antecedent (individual). Consider substituting “the individual” for “them”. Alternatively, the term “him” could be substituted. See Delaware Administrative Code Style Manual, §3.3.2.1.

Twelfth, in §8.3.2, I believe the fourth “bullet” (Evidence...conduct) is advertently “bunched” with the third bullet.

Thirteenth, in §10.8, insert “any” before “other”. Compare analogous §10.8 in the proposed Criminal History Record Checks and Drug Testing regulation, 16 DE Reg. 716 (January 1, 2013).

Fourteenth, in §11.1, capitalize “Bureau”.

Fifteenth, in §11.5.1, there is a plural pronoun (their) with a singular antecedent (Applicant). Consider substituting “his”. See Delaware Administrative Code Style Manual, §3.3.2.1.

Sixteenth, in §11.5.4, substitute “names” for “name”.

Seventeenth, Title 29 Del.C. §7972 provides for due process and a hearing to contest BCC errors. Hearings must be consistent with the APA. The regulation omits information in this context. For example, in §11.5, an applicant should be able to obtain a written copy of BCC disclosures to bring to an attorney or facilitate checking accuracy based on other records. Moreover, there is no mention of a hearing in the regulation. There is only an obtuse reference to an appeal in §11.5.5.

I recommend sharing the above commentary with the Division.

10. DLTCRP Prop. LTC Facility Crim. History Check & Drug Test Reg. [16 DE Reg. 716 (1/1/13)]

The Division of Long-term Care Residents Protection proposes to adopt a new set of comprehensive standards covering criminal history checks and drug testing for nursing and similar facilities. The changes are motivated, in part, to incorporate the role of the new “Background Check Center” (BCC) established by S.B. No. 216 enacted in July, 2012. The changes are also intended to conform to 2012 EEOC guidance on reliance on arrest and conviction records to disqualify individuals from employment. See §8.3. The regulation generally adopts the same template as the Criminal History Checks and Drug Testing for Home Health Agencies regulation [16 DE Reg. 717 (1/1/13) analyzed above. The commentary is therefore similar.

I have the following observations.

First, in §3.0, definition of “criminal history”, the Division includes the following sentence: “It shall be limited to convictions and arrests for which no disposition is available.”. This is problematic. The EEOC guidance (incorporated by reference at §8.6) discourages reliance on arrest records by employers. Moreover, the incidence of arrest records without disposition is high:

A 2006 study by the DOJ/BJS found that only 50% of arrest records in the FBI’s III database were associated with a final disposition.

At 5. Routinely including a high volume of arrest records without disposition manifestly violates a basic precept of the EEOC guidance.

Second, §5.2 envisions the BCC continuously monitoring employees in its Master List for both arrests and convictions. The BCC is then authorized to use its discretion in sharing arrest information with the employer. Consistent with the above discussion under “First”, this is not consistent with the EEOC guidance. The EEOC provides the following characterization of arrest records:

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At 12.

Third, §5.2 contains the following sentences:

DLTCRP will monitor the charge until there is a disposition. When the disposition is known, DLTCRP will inform the Employer of the conviction.

This incorrectly presumes that all dispositions will be convictions. Consider substituting “any conviction” for “the conviction”.

Fourth, the term “discrete” should be substituted for “discreet” throughout the document. It is incorrectly used in §§6.3, 6.4, 9.2, and 10.3.

Fifth, in §6.4, there is a plural pronoun (their) with a singular antecedent (employee). Consider substituting “inclusion” for “their place”.

Sixth, §7.1 states as follows:

7.1. Before hiring an Applicant, employers are required by law to obtain from prior employers and to provide to prospective employers Service Letters which provide specific information as required by the Department of Labor. 19 Del.C. §708.

This is not entirely accurate. Title 19 Del.C. §708(b)(6) authorizes conditional employment based on exigent circumstances. At a minimum, consider inserting “generally” prior to “required”.

Seventh, §7.2 recites as follows:

When an employee hired after the effective date of the BCC is terminated, the employer shall promptly complete a Service Letter which will be stored by the BCC and available to the next prospective employer. The Service Letter shall expire after 5 years.

While this employer requirement may be conceptually sound, it may lack statutory authority. Title 19 Del.C. §708(b)(5) contemplates employers maintaining the Service Letters and honoring requests from prospective employers for the Service Letters pertaining to applicants. Violations of the law result in civil penalties. I could not locate any statute which permits an employer to simply send the Service Letters to the BCC which would then respond to employer requests for the Letters.

Eighth, in §8.1, first sentence, the word “to” should be inserted between “authorized” and “furnish”. Moreover, in the first sentence, the word “to” should be inserted between “person” and “employers”.

Ninth, in §8.2, the 15-year period for abuse/neglect convictions seems a bit long. By analogy, felony theft convictions have a 10-year disqualifying period. Consider a shorter period for misdemeanors involving abuse/neglect. The conviction information would still be disclosed pursuant to the criminal background check but there would not be a categorical, “no-exceptions” disqualification from employment if the 15-year standard were modified.

Tenth, in §8.3.1, consider substituting “inform” for “informs”. There is also a plural pronoun (them) with a singular antecedent (individual). Consider substituting “the individual” for “them”. Alternatively, the term “him” could be substituted. See Delaware Administrative Code Style Manual, §3.3.2.1.

Eleventh, in §8.3.2, I believe the fourth “bullet” (Evidence...conduct) is advertently “bunched” with the third bullet.

Twelfth, in §12.3, capitalize “Bureau”.

Thirteenth, in §12.5.1, there is a plural pronoun (their) with a singular antecedent (Applicant). Consider substituting “his”. See Delaware Administrative Code Style Manual, §3.3.2.1.

Fourteenth, in §11.5.4, substitute “names” for “name”.

Fifteenth, Title 29 Del.C. §7972 provides for due process and a hearing to contest BCC errors. Hearings must be consistent with the APA. The regulation omits information in this context. For example, in §11.5, an applicant should be able to obtain a written copy of BCC disclosures to bring to an attorney or facilitate checking accuracy based on other records. Moreover, there is no mention of a hearing in the regulation. There is only an obtuse reference to “appeal” in §15.5.5.

I recommend sharing the above commentary with the Division.

11. DSS Prop. Child Care Sub. Prog.: Food Benefit Vol. Child Care Reg [16 DE Reg. 717 (1/1/13)]

The Division of Social Services proposes to adopt some discrete amendments to its Child Care Subsidy Program standards.

As background, eligible parents/caretakers participating in the Food Supplement Program can participate in activities promoting employment, i.e., Food Benefit Employment and Training. Such activities include job search training, adult education and training, and post secondary education.

I have the following observations on the regulation.

First, §3.E. limits post secondary education as follows: “E. Post Secondary Education (first degree only).” This could be interpreted as an Associates or 2 -year degree. This would be inconsistent with the attached §11003.7.5 of the DSS regulations. The latter regulation envisions “that the course of instruction will lead to a job within a foreseeable time frame, such as nursing students, ...DSS will not authorize child care services for parents/caretakers who already have one four-year college degree or are in a graduate program.” It would be preferable to modify the reference in the proposed regulation to “(not to exceed initial 4-year college degree)’.

Second, DSS is striking current §11003.3.1. At 719. This section clarifies: 1) that child care for eligible parents is an entitlement; and 2) that parents with a child under age 6 are exempt from participation unless they volunteer. If these program features remain accurate, it may be preferable to retain the substance of the standard in a regulation. I did not identify another regulation which addresses the exemption for children under age 6.

I recommend sharing the above observations with DSS.

Attachments

8g:legreg/113bils
F:pub/bjh/leg/2013P&L/113bils

**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS**

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November 20, 2012

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RE: DMMA Proposed Intermediate Care Facilities for Individuals with Mental Retardation (ICF/MR) and Long Term Care Facility Reimbursement Regulation [16 DE Reg. 517 (November 1, 2012)]

Dear Ms. Summers:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Medicaid and Medical Assistance proposal to amend its Medicaid State Plan by changing the payment methodologies for non-public ICF/MRs. The GACEC would like to share the following observations.

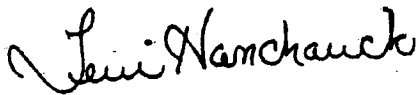
First, it seems that the State "rolled back" payment rates for non-public facilities in 2009 to the rate in effect on December 31, 2008. It is now proposing to exempt private ICF/MRs from that "roll back" for services rendered after August 1, 2012. The State projects that this will result in "leveraging" of federal funds. For example, DMMA anticipates the change will result in \$51,723 in increased State payments and \$194,200 in federal payments in SFY14. At 518. Council is aware of only one private ICF/MR in Delaware, the Mary Campbell Center. It would apparently benefit from the proposed change.

Second, other long-term care facilities subject to the "roll back" will receive additional funds based on a "Quality Assessment Rate Adjustment. That adjustment is authorized by Senate Bill No. 227 signed by the Governor on June 28, 2012. The Councils commented on the subsequent regulation defining eligibility for the adjustment. See 16 DE Reg. 38 (July 1, 2012) (proposed); and 16 DE Reg. 309 (September 1, 2012) (final).

Given the enactment of Senate Bill No. 227, and the leveraging of federal funds, Council **endorses** the proposed change since we believe that providing more funds to facilities may result in higher quality of care and an incentive to accept "Medicaid" patients. However, we would like to qualify our endorsement by stating that we hope adequate measures will be taken to ensure that the extra payments do not undermine the "movement" towards promoting community-based service options.

Thank you for your time and consideration of our comments and observations. Please feel free to contact me or Wendy Strauss should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Terri Hancharick". The signature is written in a cursive style with a large initial "T".

Terri A. Hancharick
Chairperson

TAH:kpc

**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS**

GEORGE V. MASSEY STATION
516 WEST LOCKERMAN STREET
DOVER, DELAWARE 19904
TELEPHONE: (302) 739-4553
FAX: (302) 739-6126

November 14, 2012

Charles Michels, Executive Director
Delaware Professional Standards Board
John G. Townsend Building
401 Federal Street
Dover, DE 19901

RE: DOE Proposed Early Childhood Teacher Regulation [16 DE Reg. 488 (November 1, 2012)]

Dear Mr. Michels:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Professional Standards Board and DOE proposal to adopt one change to the "Exceptional Children Special Education Teacher" regulation, 14 DE Admin. Code 1571. The GACEC **endorses** the proposed change.

The current regulation (§1.1) recites that the "Special Education Teacher" certification is required to teach grades K-12. The amendment clarifies the existence of an exception, i.e., an individual with an "Early Childhood Exceptional Children Special Education" certification (14 DE Admin Code 1570) may qualify as a special education teacher in grades K-2. An educator with the "Exceptional Children Special Education Teacher" certification can teach in grades K-12 so there is "overlap" with the "Early Childhood Exceptional Children Special Education" certification which covers grades K-2. Council did not identify any concerns with the proposed clarification.

Thank you in advance for your consideration of our comments. Please feel free to contact me or Wendy Strauss should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Terri Hancharick".

Terri A Hancharick
Chairperson

TAH:kpc

CC: The Honorable Mark Murphy, Secretary of Education
Dr. Teri Quinn Gray, State Board of Education
Mary Ann Mieczkowski, DOE
Susan Haberstroh, DOE
John Hindman, Esq., DOE
Terry Hickey, Esq., DOE
Paula Fontello, Esq., DOE

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November 14, 2012

Charles Michels, Executive Director
Delaware Professional Standards Board
John G. Townsend Building
401 Federal Street
Dover, DE 19901

RE: DOE Proposed Teacher of Students with Autism/Severe Disabilities Regulation [16 DE Reg. 489 (November 1, 2012)]

Dear Mr. Michels:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Professional Standards Board and DOE proposal to adopt a completely revised certification regulation entitled "Teacher of Students with Autism or Severe Disabilities" codified at 14 DE Admin Code 1573. Council would like to share the following observations.

First, in §2.2, the definitions of "autism", "intellectual disability", and "severe intellectual disability" merit revision based on the following:

A. The multiple references to Subparts A and D are unclear. These subparts do not appear in the cited regulations.

B. The definitions are imprecise and confusing. For example, reciting that "autism" means a disability as defined in 14 DE Admin Code 922 and 925 literally means autism includes any and all disability classifications (e.g. ED; LD; PI). The same deficiency applies to the definitions of "intellectual disability" and "severe intellectual disability". For an alternate approach, see 14 DE Admin Code 608, §1.0, definitions of "crime", "terroristic threatening", and "violent felony". Based on the latter analogy, it would be preferable to consider the following amendments:

"Autism" shall have the same meaning as provided in 14 DE Admin Code 922, §3.0 and 14 DE Admin Code 925, §6.6.

"Intellectual disability" shall have the same meaning as provided in 14 DE Admin Code 922, §3.0 and 14 DE Admin Code 925, §6.12.

"Severe intellectual disability" shall have the same meaning as provided in 14 DE Admin Code 925, §6.12.

Second, the regulation substitutes "severe intellectual disability" for the current term, "severe disabilities" or "severe developmental disabilities". See superseded version at 490-491. There were no definitions of these terms in the regulation. The latter terms would not be limited to "mental retardation" or "intellectual disability". It is unclear if the terms "severe disabilities" and "severe developmental disabilities" were interpreted, in practice, to only cover children with severe mental retardation/severe intellectual disability, i.e. those with an I.Q. of 35 or less. For example, does the current regulation also cover children with moderate intellectual disability (formerly moderate mental retardation)? Council is concerned that the regulation may be adopting more narrow criteria which would merit a more substantive analysis rather than simply viewing the language change as benign and non-substantive.

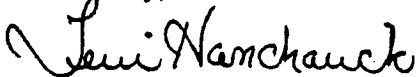
Third, there is tension between the proposed regulation and 14 DE Admin Code 922, §3.0, definition of "highly qualified special education teachers", Par. 2.0. The latter regulation restricts "highly qualified" teachers to those with "State certification as a special education teacher". Literally, this would be limited to educators certified under the special education teacher standard, 14 DE Admin Code 1571, to the exclusion of teachers certified under 14 DE Admin Code 1573-1575. The DOE may wish to consider amending Part 1571 for consistency.

Fourth, the addition of Applied Behavior Analysis (ABA) coursework (§4.1.2.1.4) merits our endorsement.

Fifth, the Council would like to inquire about the application of the "Teacher of Students with Autism or Severe Disabilities" certification. As a practical matter, we could not identify in which contexts the certification would be required. There are some general regulatory references to qualified teachers (14 DE Admin Code 923, §56.0; 14 DE Admin Code 922, §3.0, definition of "highly qualified special education teachers") but we could not locate any standards which definitively address when a teacher would require this particular certification in our analysis of the proposed regulation.

Thank you in advance for your consideration of our comments and observations. Please feel free to contact me or Wendy Strauss should you have any questions.

Sincerely,



Terri A Hancharick
Chairperson

TAH:kpc

CC: The Honorable Mark Murphy, Secretary of Education
Dr. Teri Quinn Gray, State Board of Education
Mary Ann Mieczkowski, DOE
Susan Haberstroh, DOE
John Hindman, Esq., DOE
Terry Hickey, Esq., DOE
Paula Fontello, Esq., DOE
Theda Ellis, Autism Delaware

Cuts mulled for victims' burials

Written by Doug Danison The News Journal
Dec. 10

delawareonline.com

Starting next year, families of victims killed in connection with violent crimes in Delaware may receive less compensation from the criminal justice system for funeral and burial expenses.

The board in charge of Delaware's Victims' Compensation Assistance Program wants to make its limited annual funds go further, starting with a plan to lower the cap on funeral benefits from \$8,500 to \$5,000.

Funeral directors say the change will add to the hardship of families already in the throes of tragedy, and burden them with additional expenses.

Justen Wright, a Wilmington councilman and president of the Delaware State Funeral Directors Association, spoke out against the proposal. He said \$5,000 is not enough to pay for a full-service funeral.

"How would you even have flowers, a program to pass out?" said Wright, who is vice president of The House of Wright Mortuary & Cremation Services in Wilmington.

Lisa Ogden, VCAP director, said her agency is facing a decline in the funding it receives mostly from an 18-percent surcharge added to criminal fines imposed by the courts. Crime rates are down overall in Delaware, Ogden said, but VCAP has broadened its outreach efforts and is compensating more victims and families every year for medical care, lost wages, crime scene cleanup and other costs incurred as a result of crimes.

Ogden said her agency made more than \$3.4 million in payments to more than 1,200 victims and families last fiscal year, nearly double the number served in fiscal year 2009. Each month, VCAP disburses an average of \$306,000, but only takes in an average of \$166,000 in revenue, according to Ogden.

"There's a concern we will not be able to be here for victims going forward, and that's just simply unacceptable," Ogden said. "This is part of a top-down review and close examination of all of our benefits, to look at ways to reduce costs but provide assistance to all victims."

Funeral and burial payments are one of the few VCAP compensation categories with a hard cap listed in state regulations, and Ogden said reducing the cap is the first in what is expected to be a larger slate of reforms that will reduce the amount of money paid to individual victims and families.

Ogden said her agency looked at funeral allowances established by similar entities in other states, including Pennsylvania and Maryland, where the figure is \$5,000.

The National Funeral Directors Association reports the average cost of a non-cremation funeral was \$6,500 in 2009.

The funeral and burial funds from VCAP were not necessarily meant to cover the costs of a full-service funeral, said Jason Miller, spokesman for the Department of Justice, which oversees VCAP.

"Five thousand may not, depending on the individual choices the family makes, cover all the expenses. It certainly would defray the majority of expenses," he said. "This is a matter of resources we have."

Reporter Andrew Staub contributed to this story.

Funeral/Burial Expenses: State Compensation Programs

Alaska	7,000
Arizona	5,000
Arkansas	7,500
California	7,500
Colorado	---*
Connecticut	5,000
Delaware	8,500
D.C.	6,000
Florida	5,000
Georgia	3,000
Hawaii	4,000
Idaho	5,000
Illinois	5,000
Indiana	5,000
Iowa	7,500
Kansas	5,000
Kentucky	5,000
Louisiana	5,000
Maine	5,000
Maryland	5,000
Massachusetts	4,000
Michigan	5,000
Minnesota	6,500
Mississippi	6,500 + 800 in travel costs to arrange funeral
Missouri	5,000
Montana	3,500
Nebraska	5,000
Nevada	5,000
New Hampshire	5,500
New Jersey	5,000
New Mexico	6,000
New York	6,000
North Carolina	5,000
North Dakota	5,000
Ohio	7,500
Oklahoma	6,000
Oregon	5,000
Pennsylvania	5,000
Puerto Rico	3,000
Rhode Island	5,000
South Carolina	4,000
South Dakota	6,500
Tennessee	6,000

Texas	4,500
Utah	7,000
Vermont	7,000
Virgin Islands	2,500
Virginia	5,000
Washington	7,454
West Virginia	10,000
Wisconsin	2,000
Wyoming	5,000

**no state-wide limit; Colorado district compensation programs determine limit*

RANGE of Maximums

(number of states at these maximums)

2,000:	1
2,500:	1
3,000:	2
3,500:	1
4,000:	3
4,500:	1
5,000:	24
5,500:	1
6,000:	5
6,500:	3
7,000:	3
7,500:	5
8,500:	1
10,000:	1

Median = \$5,000



SPONSOR: Rep. Barbieri & Rep. Peterman, & Sen. Cloutier
Reps. Bolden, Hocker, Q. Johnson, Schooley, M. Smith,
Walker, Wilson; Sens. Sokola, Sorenson

HOUSE OF REPRESENTATIVES

146th GENERAL ASSEMBLY

HOUSE BILL NO. 264
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO GENERAL REGULATORY PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 14, §4125 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§4125. Driver Education Certification.

(a) A driver education teacher shall not certify that a student enrolled in a State-approved driver education course during the regular school year is qualified to be issued a Driver Education Learner's Permit or a Level One Learner's Permit by the Division of Motor Vehicles unless the student has:

- (1) Fulfilled the requirements of the driver education program;
- (2) Met the minimum credit requirements to qualify as a 10th grader as of September 30 of the school year that the student enrolled in the driver education course; and
- (3) Earned passing grades in 5 credits at the time of certification, with at least 2 of those credits in separate areas of English, mathematics, science or social studies.

(b) A student who is receiving special education services under an active student's individualized education plan (IEP) will be authorized until age 21 to complete their driver education certification through a State-approved driver education course. Pursuant to Department of Education regulation, the student may be authorized to subsequently enroll in another driver education course if the student fails the driver education course during the regular school year.

~~(b)~~(c) A student who is receiving special education services and is precluded from meeting the academic requirements of subsection (a) of this section due to modifications in the grading procedure or course of study for the student shall be eligible for certification if the student's school principal determines that the student is making satisfactory progress in accordance with the requirements of that student's individualized education plan (IEP).

~~(e)~~(d) A local school board may establish requirements higher than the minimum academic eligibility requirements set forth in this section.

~~(d)~~(e) A student who does not meet the certification requirements of this section upon completion of a driver education course may meet the requirements during the subsequent marking period. If the student fails to meet the requirements at the end of the subsequent marking period, the student will be ineligible for certification.

~~(e)~~(f) Any permit issued in violation of the provisions of this section shall be cancelled, all fees forfeited and the applicant must reapply as if they were a new applicant.

20 IDELR 1155

20 LRP 2370

**Letter to Anonymous
Office of Special Education Programs**

N/A

October 8, 1993

Related Index Numbers

200.005 At No Cost

135.015 Closing of Case

200.020 Definition Under Federal Law

415.070 Transportation

515.015 Methods/Mean of Transportation

Judge / Administrative Officer

Thomas Hehir, Director

Case Summary

What is the meaning of the word "free" as used in the FAPE requirement of Part B of the IDEA? Specifically, are expenditures for items like art supplies, pencils, and paper permissible expenditures for parents of students with disabilities within the definition of this word?

In order to qualify as "free" under Part B, special education and related services must be provided at no cost to parents. However, a public agency is not precluded from charging certain "incidental" fees to the parents of students with disabilities for items such as art, chemistry, or lab supplies, provided that similar fees are also charged to the parents of nondisabled students as a part of the regular education program.

Full Text

Appearances:

Inquirer's Name Not Provided

Text of Inquiry

As the [] Tourette Support Group and the Attention Deficit Disorder Association of [] I am frequently asked to provide information to our readers relating to federal laws, specifically 94-142, dealing with our handicapped children.

The term "Free and Appropriate Education" (FAPE) seems simple enough. However, I would like some interpretation from your office relating to each of these terms. I have been told by a representative of the La. State Department of Education that it is the sole responsibility of the school system to define what is appropriate. I have a problem with this. It is like turning the hen house over to the fox. I have also been told by outside advisers that it is the responsibility of the IEP committee. If this is so then the parent should have some say in just what is appropriate. However, as a parent who has been to many IEP meetings what is offered seems to have always hinged on what the school system wishes to make available and that is usually contingent upon what they have chosen to offer system wide within their budget. Money seems to always be the driving force and never the needs of the children.

One would think that the word FREE would be simple to define. Either something is without cost or it isn't. However, my child seems to always need "fees" for this, that, or the other. As an example, he has been charged a "fee" for art supplies. It could be chemistry lab supplies or shop supplies. I have been told by one outside advisor that "art supplies" is not education. I have been told my another advisor that so long as nonhandicapped children are charged then the handicapped can also be charged. What about those who do not have the money? There was a time when all children not only got free books but they also got paper and pencils. Today you must buy your own paper, pencils and other supplies that the teacher dictates.

Another critical problem for children which are ADHD is transportation. The system is supposed to furnish transportation and it does. However, for an ADHD child that is asked to get on a bus at not long after six in the morning and ride for an hour on more to some distant school that has the program that they need is an invitation to serious trouble and disaster. The child, especially one in BD, is being set up for failure. The return ride in the evening is just as bad. Can a long bus ride for such a child be considered

appropriate. How long is long? What are the alternatives for the child and parent?

I have been forced to shoulder the expense of private transportation to school for my child for years in order to avoid all of the problems attendant with his using the school transportation system. This seems to be neither FREE or APPROPRIATE. The school system says take it or leave it.

We as parents of handicapped children did not write these laws and neither did the school systems. I can understand that they do not like these laws since they make extra demands on their resources. But the fact of the matter is, if the congress says FREE it would seem to be all inclusive. FREE should be FREE. It should not be NEARLY FREE or sometimes FREE or FREE when the school system wants it to be. If the congress did not mean FREE they should not have said FREE. I do not wish to be picky, but I will be the devil's advocate.

If the congress wanted to provide handicapped children with special rights and privileges under these laws it should not be up to the school systems to take those rights away no matter how they may feel about the laws and the demands that they place upon the systems. Those of us who have to live with these laws are not asking for special interpretations or special privileges. All we want is what the laws say we are entitled to. We just need to know what we are entitled to by your definition and not by the definition of the school system or the state department of education who may find it onerous to comply with the laws and wish to evade and avoid as much of the responsibility placed upon them by the laws as they can get away with.

I will appreciate your providing me with interpretations relating to FREE and APPROPRIATE which I can pass on to our readers and members which they might use in dealing with a recalcitrant school system that might not wish to fulfill its obligations under the laws. Your response to the bus problem will also be appreciated.

Text of Response

This is in further response to your letter to former Assistant Secretary Robert R. Davila regarding the free appropriate public education (FAPE) requirements of Part B of the Individuals with Disabilities Education Act (Part B). You are requesting this Office's interpretation of the terms "free" and "appropriate" as used in Part B. Also, you express concern about the transportation services to and from school being provided to your child who has a disability, and to other children with disabilities, by your local school district. A copy of the Part B regulations at 34 CFR Part 300 is enclosed for your information. I hope you will excuse the delay in my reply.

Under Part B, States and local school districts have an ongoing responsibility to make FAPE available to all eligible children with disabilities within the State. 20 U.S.C. § 1412(2). FAPE is defined in Part B as:

special education and related services that:

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the State educational agency, including (Part B requirements);
- (c) Include preschool, elementary school, or secondary school education in the State involved, and
- (d) Are provided in conformity with an individualized education program that meets the requirements under §§ 300.340-300.350.

34 CFR § 300.8; *see also* 20 U.S.C. § 1401(a)(18).

You indicate that your child has had to pay "fees" for such things as art supplies and that today parents must even supply their children with paper, pencils and other supplies. You question whether these expenditures are permissible expenditures for parents of students with disabilities, and would like to know how the word "free" is defined under Part B.

Under Part B, special education and related services must be provided at public expense. Therefore, in order for education to be "free" under

Part B, special education and related services must be provided at no cost to parents. The Part B regulations define the term "at no cost" to mean that all specially designed instruction is provided without charge, but does not preclude charging incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program. Thus, it is permissible under Part B for public agencies to charge parents of children with disabilities for certain "maintenance fees," such as for the art, chemistry, or lab supplies mentioned in your letter, provided they are incident fees normally charged to parents of nondisabled children as part of regular education programs.

Your letter also asks whether Part B defines the term "appropriate." While there is no specific definition in Part B for the term "appropriate," Part B requirements are designed to ensure that each child with a disability receives an educational program that addresses that child's unique educational needs. Specifically, Part B requirements for determining what constitutes FAPE for an individual child include evaluation and placement procedures at 34 CFR §§ 300.530-300.534; least restrictive environment procedures at 34 CFR §§ 300.550-300.556; individualized education program (IEP) procedures at 34 CFR §§ 300.340-300.349; and procedural safeguards available to children with disabilities and their parents at 34 CFR §§ 300.500, 300.502-300.515.

The goal of the requirements cited above is to provide a method for determining what is an appropriate program in light of each child's individual needs. Through the Part B procedural safeguards, parents and school districts may challenge what constitutes an "appropriate" special education program for an individual child. The Part B due process procedures at 34 CFR §§ 300.506-300.508 are also available to parents who disagree with a local educational agency (LEA) proposal or refusal regarding the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. Another avenue available to individuals in Louisiana who believe that a violation of Part B has

occurred is to file a complaint with the Louisiana State Department of Education (LSDE). LSDE must investigate and resolve any complaint that it receives within 60 calendar days, in accordance with the complaint provisions applicable to Part B at 34 CFR §§ 300.660-300.662. The complaint provisions can be found on Page 44829 of the enclosure.

To request a due process hearing, or to file a complaint, you can contact the State educational agency official listed below, at the following address and telephone number:

Leon L. Borne, Ph.D.

Assistant Superintendent

Office of Special Educational Services

Louisiana State Department of Education

P.O. Box 94064

Baton Rouge, Louisiana 70804-9064

Telephone: (504) 342-3633

Finally, your letter also expresses concerns about your school district's provision of transportation services to children with disabilities. The Part B regulations define transportation as a related service, where that transportation is required to assist a child with a disability to benefit from special education. 34 CFR § 300.16(b)(14). Transportation includes---

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings, and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

If a child with disabilities needs transportation to benefit from special education, then transportation must be provided as a related service. In all instances, the child's need for transportation as a related service and the type of transportation to be provided are issues to be discussed and decided during the evaluation process and IEP meeting. If the transportation arrangement decided upon is provided

as a related service, it must be included in the IEP. If agreement cannot be reached in the IEP meeting, then the issue may be taken to a due process hearing.

You indicate that in your LEA in order for some students with disabilities to obtain transportation to and from school, the students have to board the bus shortly after 6 a.m. and ride for an hour or more in order to attend classes, with a lengthy return trip. Because of this transportation arrangement, you indicate that you have had to pay for your child to use private transportation to attend school.

In addition to the requirements of Part B relevant to transportation for children with disabilities, discussed above, your letter also may be raising issues that relate to the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504). Section 504 is a civil rights statute that prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. The Department's Office for Civil Rights (OCR) is the branch of the Department that enforces Section 504. For further information about applicable Section 504 requirements regarding transportation, you may wish to contact:

Mr. Taylor D. August
Regional Civil Rights Director
Office for Civil Rights, Region VI
U.S. Department of Education
1200 Main Tower Building
Suite 2260
Dallas, Texas 75202-9998

I appreciate your taking the time to express your concerns regarding these important issues. I hope that the information contained in this letter is helpful to you and to the other members of your organization. If this Office can be of further assistance, please let me know.

Thomas Hehir
Director

Office of Special Education Programs

Statutes Cited

20 USC 1412(2)
20 USC 1401(a)(18)

Regulations Cited

34 CFR 300.340-300.350
34 CFR 300.8
34 CFR 300.530-300.534
34 CFR 300.550-300.556
34 CFR 300.500
34 CFR 300.502-300.515
34 CFR 300.506-300.508
34 CFR 300.660-300.662
34 CFR 300.16(b)(14)

22 IDELR 630

22 LRP 3101

Letter to Neveldine

Office of Special Education Programs

N/A

January 25, 1995

Related Index Numbers

365.110 Persons Qualified for Placement Decision

355.025 In General

365.130 Preschool

373. PRESCHOOL PROGRAMS

285.060 Preschool

Judge / Administrative Officer

Thomas Hehir, Director

Case Summary

Did a state's provision, which required that an appropriate professional employed by the district as well as a chair of the Committee on Preschool Special Education be members of a multidisciplinary team, comply with the requirement that members of the multidisciplinary team responsible for developing a child's IEP be qualified to provide, or supervise the provision of, special education?

A state's provision, which required that an appropriate professional employed by the district as well as a chair of the Committee on Preschool Special Education be members of a multidisciplinary team, complied with the requirement that members of the multidisciplinary team responsible for developing a child's IEP be qualified to provide, or supervise the provision of, special education. The state department of education had consistently taken the position that an appropriate professional was an individual qualified to provide special education.

Full Text

Appearances:

Mr. Thomas B. Neveldine

Assistant Commissioner

Office for Special Education Services

New York State Education Department

Education Building Annex, Room 1073

Albany, New York 12234

Text of Inquiry

This is in response to your letter of April 15, 1994 regarding the provision of special education to preschool students with disabilities. Specifically, you requested that the New York State Education Department (NYSED) revise its policy to ensure that the State is providing appropriate services to these students. It is the position of NYSED that, based on the following information, such policy revisions are unnecessary. For purposes of clarity, I have repeated the issues raised in your letter along with our response.

1. The membership of the CPSE must meet the requirements of 34 CFR § 300.344 when meetings are held to develop or review an IEP. Specifically, you stated that New York State's regulations do not appear to require that the professional employed by the district or the professional employed by the county be qualified to provide or supervise the provision of special education. In addition, you stated that it is unclear whether other people, at the discretion of the school district, may attend IEP meetings.

Response: Although Part 200 of the Regulations of the Commissioner of Education does not address the issue you raise, they are specifically addressed in § 4410 of the Education Law and in previously published memoranda. Section 4410 requires that an appropriate professional employed by the school district be a member of the Committee on Preschool Special Education. This individual must serve as the Chairperson of the Committee. The Department has consistently taken the position that an appropriate professional is an individual qualified to provide or supervise special education.

Also, according to information in an October 1989 memorandum (see attachment A) to the field under my signature, we have advised that the

representative of the municipality should hold an appropriate license or certificate in a field relating to the education of students with disabilities. Such individuals could hold a license or certificate in special education, occupational or physical therapy, psychology, social work or education administration.

In regard to the second concern, a school district may invite other non-CPSE members to IEP meetings when special expertise is needed to provide information to assist the CPSE in making a determination and recommendation regarding the child's eligibility for special education programs and services. This information was communicated by me to the field in January 1990 through a field memorandum (see attachment B).

As such, the composition of the CPSE meets the requirements of 34 CFR 300.344 including a person qualified to provide or supervise special education and allows others at the discretion of the CPSE to attend the meeting.

2. the public agency must provide FAPE in the least restrictive environment to all eligible preschool students with disabilities, even if the local educational agency does not provide free preschool programs or regular education to non-disabled preschool students. When a public agency places a child in a private preschool program for the purpose of receiving FAPE, the child's entire educational program during the time the child is placed by the public agency must be provided at no cost to the parent.

Response: As stated in my letter of November 12, 1993, when the CPSE recommends the placement of an eligible preschool student with a disability in an approved private preschool for the purpose of providing specially designed instruction, the entire program is offered at no cost to the parent.

Consistent with federal requirements, school districts make available a FAPE to all eligible preschool students with disabilities. Under 20 USC 1401(a)(18) "FAPE means special education and related services that---(A) have been provided at public expense. . . ." Further, pursuant to 20 USC

1412(2)(b), States must provide FAPE to "all children with disabilities between the ages of three and eighteen within the State not later than September 1, 1980, except that, with respect to children with disabilities aged three to five . . . the requirement . . . shall not be applied in any state where the application of such requirements should be inconsistent with state law or practice. . . . Consistent with federal law, 34 CFR 300.300(b)(5) provides that a state need not make available a FAPE to 3-5 year olds if "(i) state law expressly prohibits, or does not authorize the expenditures of public funds to provide education to non-disabled children in that age group." Since New York law does not provide a free universal system or preschool education for three and four year olds, a local school district meets the FAPE requirements by making available special education and related services at no cost in accordance with student's individualized education program.

In addition, the Office of Special Education Programs has indicated that school districts that do not operate programs for non-disabled preschool children are not required to initiate new programs solely to satisfy federal LRE requirements. The school district is also not responsible for services not included on the student's IEP. As described in the attached memorandum of April 1991 (see Attachment C) school districts that do not operate free preschool programs are encouraged to pursue a number of ways to provide appropriate opportunities to meet a student's needs in the least restrictive environment.

As described in the April 1991 memorandum, the preschool continuum of services includes a special class program in an integrated setting. This program option, which requires application to the State Education Department for approval, is a special class of no more than 12 preschool children which is staffed by at least one special education teacher and one paraprofessional. Eligible preschool students who are placed in such programs receive their education at no cost. Special class in an integrated setting can be provided in the following ways:

in a class of no more than twelve preschool

children, which includes both non-disabled and disabled children; or

in a class of no more than twelve preschool children with disabilities staffed by a special education teacher and a paraprofessional and housed in the same classroom space as a preschool class of non-disabled children taught by another teacher.

3. A placement team which meets the requirements at 34 CFR 300.533(a)(3) must place the child in the least restrictive environment necessary to implement the IEP. The natural setting may be the child's placement only if it meets all Part B requirements, including LRE requirements at 34 CFR 300.550---300-556.

Response: According to Section 4410 of the Education Law and Part 200.16 of the Regulations, Committees on Preschool Special Education must define the extent to which the preschool student will participate in programs in the least restrictive environment appropriate to the student within the individualized education program. This information is determined upon consideration of information included in the individual evaluation of the student. While the wishes of the parent are considered in making this placement determination, the CPSE's placement decision must be made in a manner consistent with the LRE requirements under Part B. Further, each agency that submitted an application to be considered a preschool special education provider, included a description of how programs and services operated by the agency would be provided in a manner consistent with LRE requirements. Therefore, based on this information, it is not necessary to revise state policy regarding this matter.

Since every program is currently required to offer their services in the least restrictive environment to the child, whenever the IEP indicates that the placement be with non-disabled peers, it is the obligation of the CPSE to provide such opportunities for the child.

4. If the placement team determines, based on the child's IEP, that in addition to what you define as

stand-alone services, the child needs interaction with non-disabled peers, the public agency is responsible for making available an appropriate program and ensuring that tuition costs associated with that placement for the period of time necessary to implement the IEP are at no cost to parents.

Response: We do not agree with your position on this matter. However, I indicated above and in my previous letter of January 29, 1993 to [], and above, if the CPSE determines that the special instruction must be provided in an integrated setting, New York's system can provide such opportunities. For those children who are educated in a special class in an integrated setting, the total cost of the program is at no cost to the parent. In addition, where the public agency offers free preschool education, that program would be available to the child with a disability at no cost, to the extent the CPSE deemed it appropriate.

It is our firm belief that New York's preschool special education system provides the flexibility needed to allow for the delivery of special education and related services in the child's natural environment, wherever that may be. It meets both the spirit and intent of federal law. Since this information resolves all of the issues raised in your April 15, 1994 letter, we await the timely receipt of New York State's fiscal year 1995 Part B and Section 619 funds. Please notify us of you[r] final determination regarding this issue.

Text of Response

Staff from the Office of Special Education Programs (OSEP) have completed their analysis of New York's policies and procedures regarding placement of preschool-aged children with disabilities in the least restrictive environment (LRE). This letter presents the issues and our response in the same order as presented in your letter of July 1.

ISSUE 1: Membership of the multidisciplinary team responsible for developing a child's IEP.

OSEP's concern was that the New York regulations did not appear to require that either the professional employed by the school district, or the

appropriately certified or licensed professional appointed by the chief executive officer of the municipality, be qualified to provide, or supervise the provision of, special education. Further, it was unclear whether other people at the discretion of the agency may attend the meetings.

The New York State Education Department (NYSED) responded that Section 4410 of the State Education Law requires that an appropriate professional employed by the school district be a member, as well as the Chair, of the Committee on Preschool Special Education (CPSE) (Section 4410(3)). Your response states that NYSED has consistently taken the position that an appropriate professional is an individual qualified to provide special education. Finally, section 4402 of the State Education Law states that a committee on special education may include "other persons as the board of education or the board of trustees shall designate."

This information satisfactorily addresses OSEP's concerns.

ISSUE 2: The public agency must provide FAPE in the least restrictive environment even if the LEA does not provide free preschool programs to all preschool-aged children. Further, when the public-agency places a child in a private preschool program for the purpose of receiving FAPE, the child's entire educational program during the time the child is placed by the public agency must be provided at no cost to the parent.

New York's response states that when the CPSE places a preschool child with a disability into a private preschool program for the purpose of providing specially designed instruction, the entire program is offered at no cost to parents. It then states that "consistent with federal requirements, school districts must make a FAPE available to all eligible preschool students with disabilities" and that "a local school district meets the FAPE requirements by making available special education and related services at no cost in accordance with a student's IEP." We believe that this information clarifies that the public agency must provide FAPE to a

preschool-aged child with a disability in the least restrictive environment where the child's unique needs as contained in the IEP can be met, regardless of whether the LEA provides regular education or free preschool programs to nondisabled children.

It is important to note, however, that the regulatory provision at 34 CFR 300.300(b)(5)(i), that a State is not required to provide FAPE to a preschool-aged child with a disability if "State law expressly prohibits, or does not authorize, the expenditure of public funds to provide education to nondisabled children in that age group," does not apply to New York. As we have previously stated, this regulatory provision does not apply if the State is required to provide FAPE to all preschool-aged children with disabilities. As indicated in New York State law and regulations, the April 1991 memorandum submitted with the July 1, 1994 letter, as well as policies in the Part B State plan and participation in the Preschool Grants program, New York State has chosen to provide FAPE to all preschool-aged children with disabilities.

ISSUE 3: A placement team which meets the requirements at 34 CFR § 300.533(a)(3) must place the child in the least restrictive environment necessary to implement the IEP. The "natural setting" may be the child's placement only if it meets all Part B requirements including LRE requirements at 34 CFR § 300.550-300.556.

New York's response states that based on section 4410 of the Education Law and Part 200.16 of the regulations, the team must "define the extent to which the preschool student will participate in programs in the LRE appropriate to the student within the individualized education plan (IEP). . . . While the wishes of the parent are considered in making a placement determination, the CPSE's placement decision must be made in a manner consistent with the LRE requirements under Part B. . . . Since every program is currently required to offer their services in the LRE the child, whenever the IEP indicates that the placement be with nondisabled peers, it is the obligation of the CPSE to provide such opportunities

for the child." We believe that this information clarifies that the natural setting may be the child's placement only if it meets all Part B requirements.

ISSUE 4: If the placement team determines, based on the child's IEP, that in addition to what you define as stand-alone services, the child needs interaction with nondisabled peers, the public agency is responsible for making available an appropriate program and ensuring that tuition costs associated with that placement for the period of time necessary to implement the IEP are at no cost to parents.

In its July 1, 1994 response, New York specifically disagrees with OSEP on this issue, but states "if the CPSE determines that the special instruction must be provided in an integrated setting, New York's system can provide such opportunities." Our concern is that it appears that if the CPSE determines that special instruction must be provided in an integrated setting and a child's "natural setting" already provides contact with nondisabled children, the CPSE believes that it can meet its obligation to provide FAPE by paying only for the specially designed instruction and has no obligation to pay any of the tuition costs associated with the child's natural setting. It is inconsistent with Part B for the parent to pay the tuition costs associated with providing the opportunity for interaction necessary to implement the child's IEP simply because the child is already in a setting that provides for interaction with nondisabled peers.

As previously stated by OSEP, there may be circumstances where a placement team determines that a specific service needed by a child could be provided in a variety of settings and would not require interaction with nondisabled peers, assuming all other Part B requirements are met. In those instances where the placement team has determined that provision of that service is all that is required to provide FAPE to the child, the public agency is only responsible for providing the required service and that service could be provided in a variety of settings, including the child's natural setting. However, if the placement team determines, based on the child's IEP, that in

addition to what you define as stand-alone services, the child needs interaction with nondisabled peers, the public agency is responsible for making available an appropriate program in the least restrictive environment, and ensuring that tuition costs associated with that placement for the period of time necessary to implement the IEP are at no cost to parents.

As indicated in the discussion above, OSEP continues to have concerns about New York's policy on "stand-alone services." Therefore, we are requesting an assurance from NYSED that if a placement team determines based on a child's IEP that, in addition to what you define as stand-alone services, the child needs interaction with nondisabled peers, the public agency is responsible for making available an appropriate program and ensuring that tuition costs associated with that placement for the period of time necessary to implement the IEP are at no cost to parents. If you have any questions, please contact this Office at (202) 205-5507. *

Thomas Hehir

Director

Office of Special Education Programs

Statutes Cited

20 USC 1401(a)(18)

20 USC 1412(2)(B)

Regulations Cited

34 CFR 300.533(a)(3)

34 CFR 300.550-300.556

34 CFR 300.300(b)(5)(i)

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October 17, 2012

Susan Haberstroh, Education Associate
Regulation Review
John G. Townsend Building
401 Federal Street, Suite 2
Dover, DE 19901

RE: DOE Proposed Cyberbullying Regulation [16 DE Reg. 351 (October 1, 2012)]

Dear Ms. Haberstroh:

On July 27, 2012, the Governor signed Senate Bill No. 193 which requires the Department of Education to promulgate a uniform cyberbullying policy based on a model developed by the Department of Justice. The Lt. Governor and Attorney General conducted public hearings to obtain input on the model.

Students with disabilities are disproportionately victims of bullying. The attached article, "Teens with Disabilities Face High Rates of Bullying" (September 4, 2012), describes research demonstrating that 57% of students with intellectual disabilities are bullied and slightly less than half of students with autism, learning disabilities and speech/language impairments are victimized. The research also concluded that bullying of students with disabilities is more prevalent in general education settings. Moreover, bullying does not "build character". See attached article entitled "Myths and Facts About Bullying in Schools" (April, 2005). Students who are victimized are often characterized by low self-esteem, depression, and poor coping skills. Bullying also results in diminished academic performance. See attached article, "Academic Consequences Follow Social Rejection" (March 23 2006). Therefore, the concept of deterring bullying, including cyberbullying, merits our endorsement.

At the same time, some students with disabilities may be more subject to discipline for cyberbullying based on their lack of deliberative functioning. For example, a student with

Attention Deficit Hyperactivity Disorder (ADHD) may impulsively post a picture or publish communication without appreciating the consequences or intending any harm.

Given this background, Council is very interested in regulations on this issue and would like to share the following observations on the proposed regulation.

First, §2.3 recites as follows:

The place of origin of speech otherwise constituting cyberbullying is not material to whether it is considered cyberbullying under this policy, nor is the use of school district or charter school materials.

At a minimum, the word "communication" should be substituted for "speech". The Delaware Bullying Prevention Association website [www.bullyprevention.org/aboutdbpa.html] defines cyberbullying as including "denigration: spreading information or pictures to embarrass". The term "speech" may not cover publication of a hostile or embarrassing photo and §2.1 uses the broader term, "communication". For the same reason, the term "communication" should be substituted for the term "speech" in §2.2.

However, the premise that the place of origin is completely immaterial creates additional problems. If the origin is actually misuse of a classroom computer, that conduct may be more closely regulated. Council would ask that you consider the following alternatives:

Communication may qualify as cyberbullying irrespective of place of origin and irrespective of use of school district or charter school materials.

Or

Communication may qualify as cyberbullying regardless of both place of origin and lack of reliance on school district or charter school materials.

Second, the term "unpleasant" in §2.1 is "overbroad". Communication may be "unflattering", "not pleasant", or "negative" without rising to the level of bullying. Moreover, the regulation should preferably conform to the statutory definition of bullying in Title 14 Del.C. §4112D(a). To the extent the regulatory definition conflicts with the statutory definition (which includes "electronic" actions); the regulation is subject to judicial invalidation. Moreover, the regulation omits the concept of "intention" which is contained in the statute. For these reasons, the Department could consider the following substitute:

Cyberbullying means the use of uninvited and unwelcome electronic communication directed at an identifiable student or group of students intended to cause embarrassment, humiliation, fear, or emotional harm.

The terms "embarrass", "humiliating", "fear", and "emotional harm" are contained in the statute. The term "unpleasant" is not in the statute.

Third, Council has no expert opinion on privacy settings used in social networks. Clearly, broad dissemination of "bullying" communication should be covered in the regulation. See, e.g., the attached article, "Internet 'Burn Books' Sparking Controversy" (August 19, 2012) which describes anonymous postings with broad dissemination. However, if a student restricts access to his social media postings to non-students, parents, or relatives, the student should not be considered to be "bullying" since the student has no intention of critical communication being disseminated to other students or faculty. Section 2.4 is overbroad by establishing a categorical rule that, regardless of privacy settings, use of prevalent social media is "considered to be automatically available to a broad audience within the school community". If a student describes a faux pas or embarrassing behavior of a fellow student only to a parent via Facebook, the student has violated the regulation despite no intention of bullying or harming the other student. Conceptually, if a student describes some activity in the equivalent of a personal diary, it should not be grounds for punishment. Council recommends consideration of more discriminating standards than the conclusive presumption that the use of prevalent social media, regardless of privacy settings, is considered to be available to a "broad audience within the school community".

Fourth, the regulation only covers student-student bullying. Consistent with the attached article, "When the Bully Is the Teacher" (September 12, 2011), research confirms that teacher bullying of students is "a common problem" with 93% of teachers and students surveyed reporting that teacher bullying is occurring in schools. The bullying statute [Title 14 Del.C. §4112D] is not limited to student-student bullying and the regulation could be improved by also addressing teacher-student bullying.

Thank you in advance for your consideration of our comments. Please feel free to contact me or Wendy Strauss should you have any questions.

Sincerely,



Terri A Hancharick
Chairperson

TAH:kpc

CC: The Honorable Mark Murphy, Secretary of Education
Dr. Teri Quinn Gray, State Board of Education
Charles Michels, Professional Standards Board
Mary Ann Mieczkowski, DOE
John Hindman, Esq., DOE
Terry Hickey, Esq., DOE
Paula Fontello, Esq., DOE

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Teens With Disabilities Face High Rates Of Bullying

By Michelle Diament | September 4, 2012

Roughly half of adolescents with autism, intellectual disability, speech impairments and learning disabilities are bullied at school, new research suggests.

That's significantly higher than the rate of bullying faced by typically developing students, about 1 in 10 of whom are victimized by their peers.

The findings reported Monday in the Archives of Pediatrics & Adolescent Medicine are based on data from a nationwide survey of more than 900 parents of teens receiving special education services.

Researchers found that about 57 percent of students with intellectual disability were bullied, while slightly less than half of students with autism, learning disabilities and speech/language impairments were victimized.

Parents also reported that some students with disabilities were responsible for perpetrating bullying, but this occurred at rates more similar to those experienced by typically developing students, the study indicated.

The likelihood that a teen would be bullied was greatest for those with the worst social skills, researchers said. What's more, students with disabilities who spent more time in mainstream classrooms tended to face a higher risk of bullying. Accordingly, the researchers said that schools need to do more to promote an accepting environment.

"Tailored antibullying programs are needed to address the unique needs of these vulnerable adolescents given their social, communication and academic impairments," wrote Paul Sterzing of the University of California, Berkeley and his colleagues in the study.

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■ FEATURE ARTICLE

Myths and Facts About Bullying in Schools

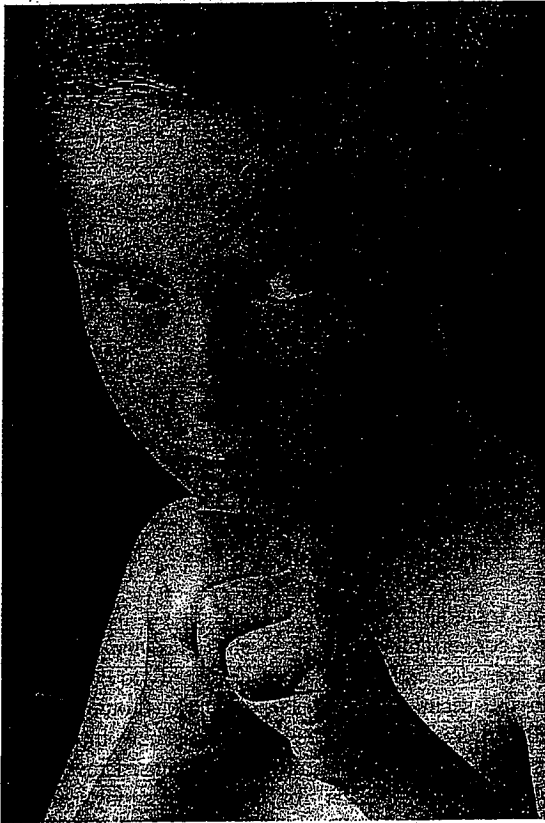
Effective interventions depend upon debunking long-held misconceptions

by Jaana Juvonen, PhD

Bullying among schoolchildren is receiving a lot of public attention. The news media implicates bullying as a reason underlying serious school shooting incidents. Popular press and entertainment media, in turn, depict bullying tactics that manipulate social relationships among girls as particularly mean and hurtful (for example, as in the film *Mean Girls*). The attention that bullying is receiving in the media has increased the public's awareness of bullying as a problem, but the portrayals also frequently promote misconceptions about bullying that are not supported by contemporary research. In this article, I question some of these depictions in light of the most recent empiric evidence. I start by defining what bullying entails and, after reviewing some of the common myths, conclude with guidelines for intervention.

One Definition, Multiple Manifestations

Bullying involves an imbalance of power between the perpetrator and the target, such as a strong child intimidating a weaker one. Intimidation can be achieved by many means.¹ Across multiple age groups, name-calling is by



far the most common form of bullying among boys and girls. Young children, and boys of all ages, are more physically aggressive than are adolescents and girls of any age. Although the popular media depicts girls as the masters of covert social tactics of meanness, boys engage in spreading rumors and social exclusion, as well. Most targets of bullying are victimized in multiple ways. Moreover, experiences of bullying hurt

regardless of the means. Based on the current evidence, we cannot presume a slap on the face hurts more than a nasty rumor, or vice versa.

Challenging Myths About Bullying

Myth: Bullies suffer from low self-esteem. When bullies are identified by means other than self-report (i.e., based on teacher or peer ratings), no evidence suggests that bullies suffer from low self-esteem. To the contrary, many studies report that aggressive youth perceive themselves in a positive light, at times displaying inflated self-views. Recent evidence shows that bullies are less depressed, socially anxious, and lonely than socially adjusted youth who are uninvolved in bullying.² These findings regarding positive self-perceptions and lack of emotional distress can

be understood when we consider peer status of bullies, which relates to the next common misconception.

Myth: Bullies are social outcasts. Contrary to the common stereotype, bullies are not social outcasts. Bullies are frequently members of social groups or networks.³ They are also likely to have friends. However, these friendships typically involve other aggressive youth who reinforce bullying

behavior. In addition, bullies are popular among their peers. In our research on middle-school students, we found that classmates rate bullies among the "coolest kids" in their classes.²

Some of the reasons underlying the high social status of bullies can be understood in the light of evolutionary principles, such as establishment of social dominance. Among primates, aggression establishes dominance within a group. It is therefore possible that children, and especially young teens, rely on bullying tactics to secure their place on top of the social hierarchy.

Myth: Victims of bullying become violent. One depiction of victims of bullying promoted by the news media is that targets of repeated peer maltreatment eventually lash out at their tormentors. This idea was reinforced by school shooting incidents since the late 1990s. However, research shows that

most victims of bullying suffer in silence rather than retaliate. Identified as *submissive victims*,⁴ these targets of bullying display psychological problems, including depression, social anxiety, and low self-esteem.⁵ When victims blame themselves for their plight and view the causes of bullying as beyond their control (e.g., thinking that they are bullied because they are obese or because of their cultural heritage), they are particularly likely to feel distressed.⁶

In contrast to submissive victims, a smaller subset of chronic targets of bullying—*aggressive victims*—are likely to retaliate or to provoke hostility.⁷ Aggressive victims display a distinct profile of social-emotional and school-related difficulties (they are extremely rejected by classmates and display academic problems) indicative of other underlying problems, such as

emotion regulation problems typical of children who have attention deficit disorders.⁸ It is possible that the psychological profile of aggressive victims fits that of school shooters. In spite of such similarities, we cannot presume that most aggressive victims will resort to violence. Furthermore, it is critical to understand that we cannot accurately predict who will become a potential perpetrator of school violence.⁹

Myth: Bullying builds character. An old misconception of bullying was that such experiences are an important part of growing up. In contrast to this view, research clearly shows that bullying experiences increase the vulnerabilities of children. For example, passive and socially withdrawn children are at heightened risk of being bullied, and these children become even more withdrawn after incidents of bullying.¹⁰ Similarly, youth who have

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unfavorable perceptions of their social standing are at risk of being bullied, and bullying experiences have negative impacts on self-views.¹¹ Thus, certain characteristics or behaviors may mark a child as an "easy target," and bullying experiences exacerbate these same attributes. Based on the limited data available, it appears that for most youth the negative emotional effects of bullying are acute rather than long-lasting. However, sensitivity to harassment may be increased. Moreover, youth who are depressed and victimized have a higher risk of depression as adults, but to say that being bullied as a youth causes depression in adults is probably overly simple.

Myth: Bullying is a problem limited to bullies and victims. Many parents, teachers, and children view bullying as the sole problem of bullies and victims. Yet ample research demonstrates that

bullying involves much more than the bully-victim dyad. Based on playground observations, Craig and Pepler found that in 85% of bullying incidents, an average of four peers were present.¹² Furthermore, witnesses are not necessarily innocent bystanders but often play a critical part in bullying.

Scandinavian researchers (e.g., Olweus⁴) have identified various participant roles, such as assistants to bullies, reinforcers, defenders of victims, etc., who play crucial roles in reinforcing and maintaining bullying behavior. Assistants to bullies ("followers" or "henchmen") take part in ridiculing or intimidating a schoolmate. They do not initiate the hostile overture but rather join in and facilitate bullying. Reinforcers or supporters, in turn, encourage the bully by showing signs of approval (e.g., smiling) when someone is bullied.

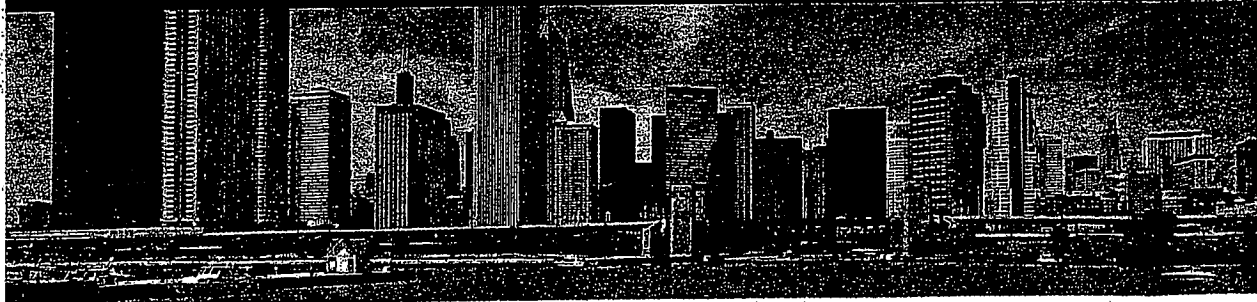
Encouragement does not have to be active; passive responding (i.e., lack of interference or help seeking) is adequate to signal approval.

Implications for Intervention

In light of these misconceptions and empiric research, it is important for us to consider implications for intervention. For example, intervention programs that try to boost the self-esteem of bullies are highly questionable. Research findings suggest that bullies get sufficient "ego boosters" from their classmates, who consider them to be cool. Based on the evidence of bullies' high social standing and its effect on positive self-regard, it is the popularity of bullies that needs our concern.

Even if evolutionary principles help us understand why bullies have high

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social status, it does not mean that we cannot teach children principles of a democratic and civilized society in which all members have a right to fear-free schooling. This requires a major shift in whom we target with our interventions: Rather than focusing on bullies, we might be more successful in changing the peer group norms that reinforce bullying. This is the basic operating principle of school-wide antibullying programs. Bullying is not considered an individual problem of some students but a social problem of the collective. Such an approach to bullying might also alleviate the despair of the victims of bullying.

Changing a school's social norms or culture requires increased awareness of the problem's nature, heightened monitoring, and systematic and consistent responses to bullying incidents by school staff. Most school-

wide programs are based on a model developed by Olweus.⁴ I characterize the key elements of such an approach as follows:


- A strong *school statement* promoting positive social relationships and opposing bullying, along with a description of how the school deals with bullying incidents.
- A declaration of the *right of individuals* and groups in the school—students, teachers, and others—for a fear-free working and learning environment.
- A statement of the *social responsibility* of those who witness peer victimization to intervene or seek help. Both students and parents with bullying concerns are encouraged to speak with school personnel so that incidents can be followed up.

In addition to these general guidelines, U.S.-based programs influenced by conflict resolution models also include *explicit instruction of strategies* that can prevent bullying incidents or ameliorate their negative emotional impact (for a review of interventions, see the work by Sanders and Phee¹³). For example, as part of a program developed at the laboratory school of the University of California, Los Angeles, called *Cool Tools*, students are taught to leave or "exit" situations before they escalate (see sidebar). They also learn about communication strategies relevant either during or right after the bullying episode, such as talking to someone about the incident. Other strategies consist of internal coping responses (e.g., how to reframe incidents, how to problem solve, etc.). These skills are taught to all students, with the assumption being that it is not sufficient for students to

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know what *not to do*: They also need to be taught what *to do*. Most importantly, daily incidents of bullying are regarded as "teachable moments" during which the acquired knowledge can be applied and skills practiced. School staff probe and remind students of the strategies when they mediate bullying incidents in the school yard or hallways. Consistent follow-through of incidents is essential to the generalization of these invaluable life skills.

The many myths about school bullies and victims should not guide intervention efforts. Instead, we need to rely on the knowledge gained through research to help us deal with the pervasive problem of bullying and its detrimental effects on children and youth. **BHM**

Jaana Juvonen, PhD, is a Professor of Developmental Psychology at the University of California, Los Angeles.

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References

1. Juvonen J, Graham S, eds. Peer Harassment in School: The Plight of the Vulnerable and Victimized. New York: Guilford Press, 2001.
2. Juvonen J, Graham S, Schuster MA. Bullying among young adolescents: The strong, the weak, and the troubled. *Pediatrics* 2003;112:1231-7.
3. Cairns RB, Cairns BD. Lifelines and Risk: Pathways of Youth in Our Time. New York: Cambridge University Press, 1994.
4. Olweus D. Bullying at School: What We Know and What We Can Do. Malden, Mass.: Blackwell Publishing, 1993.
5. Hawker DS, Boulton MJ. Twenty years' research on peer victimization and psychosocial maladjustment: A meta-analytic review of cross-sectional studies. *J Child Psychol Psychiatry* 2000;41:441-55.
6. Graham S, Juvonen J. Self-blame and peer victimization in middle school: An attributional analysis. *Dev Psychol* 1998;34:587-99.
7. Perry DG, Kusel SJ, Perry LC. Victims of peer aggression. *Dev Psychol* 1988;24:807-14.
8. Schwartz D, Proctor LJ, Chien DH. The aggressive victim of bullying: Emotional and behavioral dysregulation as a pathway to victimization by peers. In: Juvonen J, Graham S, eds. Peer Harassment in School: The Plight of the Vulnerable and Victimized. New York: Guilford Press, 2001: 147-74.
9. Mulvey EP, Cauffman E. The inherent limits of predicting school violence. *Am Psychol* 2001;56:797-802.
10. Schwartz D, Dodge KA, Coie JD. The emergence of chronic peer victimization in boys' play groups. *Child Dev* 1993;64:1755-72.
11. Egan SK, Perry DG. Does low self-regard invite victimization? *Dev Psychol* 1998;34: 299-309.
12. Craig WM, Pepler DJ. Observations of bullying and victimization in the school yard. *Canadian Journal of School Psychology* 1997;13:41-59.
13. Sanders CE, Phye GD, eds. *Bullying: Implications for the Classroom*. San Diego: Elsevier Academic Press, 2004.

Teaching Kids to Stay Cool

The general principles of school-wide antibullying programs incorporated by *Cool Tools* consist of school policy focus on individual rights to fear-free schooling, and social responsibility to others; these are presumed to help reduce the number of incidents of bullying. Moreover, *Cool Tools* specific goals to teach children effective ways to deal with bullying. When students respond to bullying in ways that discourage the bully, incidents should be diminished. Furthermore, when students learn to better deal with "put-downs," the emotional impact of bullying will be less distressing.

The philosophy behind *Cool Tools* is to provide children with a common core language for resolving conflicts and to learn lifelong strategies for coping with peer harassment and humiliation. The *Cool Tools* language helps children "cool down," choose their words and tone carefully, and, if necessary, exit a heated situation in a way that "saves face." To be effective, *Cool Tools* needs to be taught at all grade levels to promote the use of a common core language among multi-age students who interact as a community. *Cool Tools* focuses on the whole school, not only problem cases; is proactive, not punitive; is responsive, not only reactive; offers strategies, not time-outs/suspensions; involves adult-guided mediation, not peer mediation; and focuses on incidents, not on "at-risk" students.

The toolbox used in *Cool Tools* features a variety of attention-grabbing "tools" that serve as concrete objects representing abstract social/behavioral concepts. These include inflatable shoes used to represent the ability to exit the situation, kaleidoscopes to promote an understanding of different points of view, and a Big Mistakes eraser to represent compassion and forgiveness. By using the tools as physical representations of abstract concepts, students are better able to grasp their meaning, as well as such corresponding values as self-reliance, empathy, and fairness.



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Getty Images/FARJANA-K. GODHULY

Making sure children are not being ostracized from their peer group is important to their learning and long-term well-being, says a recent study of Midwestern children.

Academic consequences follow social rejection

By SANDRA G. BOODMAN
The Washington Post

It's a time-honored stereotype: the social outcast who ignores the derision of classmates to become a straight-A student, the kid who waves his or her hand in a desperate attempt to answer the teacher's every question.

Yet the reality, it seems, is different: Researchers who followed 380 Midwestern children from the ages of 5 to 11 found that those who were chronically rejected by their classmates were more likely to withdraw from school activities and scored lower on standardized tests than their popular peers.

"We're talking about kids whose classmates don't let them sit with them in the cafeteria," said lead researcher Eric S. Buhs, an assistant professor of educational psychology at the University of Nebraska-Lincoln. Many educational experts regard peer exclusion as a form of bullying and agree that group rejection is more insidious and harder to address than overt one-on-one acts such as shoving a classmate into a locker or spreading vicious gossip.

See REJECTION — E6

Rejection: Social isolation is detrimental to academic performance

FROM PAGE E1

Peer-group rejection, Buhs and his co-authors report in a study funded by a grant from the National Institutes of Health, starts as early as kindergarten. It appears to affect boys and girls equally. And it often triggers a vicious circle that can cause long-term psychological damage and impair a child's academic performance.

Exclusion makes it difficult for a child to join group activities, so the victim disengages from school as a way of avoiding further abuse. Withdrawal acts as a "persistent signal to classmates" that rejected children are not members of the group

and reinforces the ostracism, noted the researchers, whose study appears in the current issue of the Journal of Educational Psychology.

Buhs' team found that students who were rejected by their peers in kindergarten tended to become children who were chronically rejected in older grades. By fourth grade they scored measurably lower on standardized reading and math tests than their classmates.

"Social isolation is one of the most devastating things you can do to a human being. I don't care how old you are," said Rosalind Wiseman, a veteran educator in Washington and the author of

"Queen Bees and Wannabes," the bestselling book about girls and cliques that became the basis for the movie "Mean Girls."

"How are you supposed to concentrate on your schoolwork when all you can think about is 'Everybody hates me?'" Wiseman asked.

Wiseman, co-founder of the Empower Program, an anti-bullying and violence prevention group that works with public and private schools in the Washington area, said that educators have become increasingly aware of the problem of exclusion.

Wiseman suggests that parents who learn their child is being ostracized try to "avoid

freaking out, calling the school and saying, 'I'm coming over right now' to fix it.'" Instead they should try and remain calm and work with the school to solve the problem, which might involve individual training in social skills for the child.

Parents, she added, can enroll their child in an out-of-school activity based on a passion that can become the basis of a bond shared with other children.

One of the most important first steps for parents, she said, is to listen carefully. "You tell the child you're sorry that this is happening," Wiseman advised. "Then you say, 'Together you and I are going to work on this.'"

WHAT PARENTS CAN DO

Psychologists say it isn't always obvious to parents that their child is being excluded at school, because many children are reluctant to discuss it. Exclusion is a form of bullying and can cause lasting psychological damage, particularly if the problem persists. Here are some responses experts recommend if you suspect your child is a victim:

- Take it seriously and listen carefully. Do not dismiss or minimize what is happening. Empathize without overreacting or blaming your child.

- Make your child feel that home is a supportive place.
- Determine whether an adult at school has noticed the problem.
- Discuss the issue with a teacher, guidance counselor or school psychologist.
- Enroll your child in an activity with other children outside school.
- If the problem persists, consider asking for a change of classrooms. If the situation doesn't improve, think about switching schools.

Sources: National Association of School Psychologists; Rosalind Wiseman; expert interview.

Internet 'burn books' sparking controversy

By CINDY STAUFFER

Intelligencer Journal/Lancaster New Era

LANCASTER, Pa. — You have a big nose. Your butt is huge. You're ugly. You smell.

These insults — and much worse — are popping up on the Internet in "burn book" accounts that are specific to area schools and to particular students there. The burn books are creating a stir in local communities and across the country.

Inspired by the 2004 Lindsay Lohan movie "Mean Girls," burn books are Twitter accounts where an anonymous person posts multiple Tweets that insult, taunt and call out classmates by name on the social media messaging network.

Manheim Township, Warwick, Manheim Central, Donegal, Garden Spot, Hempfield and Ephrata schools are among those that have been targeted by burn book accounts.

Concerned parents and students have alerted local police departments about the burn books, which also make graphic accusations about students', or even teachers', sexual habits, drinking or drug use, in addition to the put-downs.

The accounts specialize in casual cruelty, with Manheim Central's signing off Wednesday night with this flippant tweet: "I'm done for tonight, don't cry yourself to sleep people."

Some local police say the accounts are more than just insulting. They are taking steps to obtain account holders' names and will consider prosecution on charges such as harassment or harassment by communication.

"This absolutely is cyberbullying, this is what it's about," said Lititz police Detective John Scho-

field, who said his department fielded five phone calls Wednesday alerting police to the Warwick burn book. "It could rise to a criminal charge."

Lancaster County District Attorney Craig Stedman agreed.

"I can't charge someone for being a jerk, but I could see someone crossing over that line and we'd end up having to file charges," he said of some of the more lewd postings.

Some say the burn books are a modern version of playground taunts and that people simply should ignore them or block them.

Ephrata police Sgt. David Shupp said his department has not received calls about the Ephrata burn book. He said it would be difficult to find the manpower to police these types of Internet problems.

"You can fix 10 of these, and 20 more are coming tomorrow," he said. "It just keeps coming. Kids just keep doing stupid things."

The burn book that recently popped up in Manheim township had more than 400 students following it when it was taken down Wednesday.

Students have been both delighted — "Whoever is behind this I kinda wanna shake yr hand" is what someone posted on the Manheim Central burn book — and combative — "I know a lot of people that love me," posted a student who had been called out on the site.

In some communities, students are fighting back by starting alternative sites. Someone started the "Warwick friend book" Twitter account that also names students, but compliments them for being "super hot," "a great dancer" and "gorgeous."

Some upset viewers apparently are taking

their complaints directly to Twitter and filing reports about the accounts. Twitter has shut down most of the local burn books in just the past few days.

Twitter's press office did not return an email asking for comments.

Manheim and other schools have had several versions of burn books. One gets taken down and another one pops up in its place.

Burn books have been around for years in different formats. Formerly called "slam books," they used to be a spiral-bound notebook where someone would post a question and pass it around in school for others to write an answer. Insults also were usually written in the book.

The burn book was featured prominently in "Mean Girls," which chronicles the comeuppance of a girls' clique called the Plastics.

Schools in Arizona, Georgia, South Carolina and other areas also have been targeted by burn book accounts, according to online news accounts.

In fact, the phenomenon has been around long enough that it already has been parodied in such Twitter accounts as "Suri's Burn Book," where Tom Cruise and Katie Holmes' precocious child allegedly tweets thoughts such as, "Jennifer Aniston is engaged! I hope she and Justin are really happy together and that Angelina Jolie gets hit by a car."

Locally, many people are hoping the fad is short-lived.

"Harassment is harassment, no matter how you look at it," Schofield said.

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When the Bully is the Teacher

Posted by admin on September 12, 2011

An Interview with an Expert on Bullying Provides a Thought-provoking Perspective

By Jean Harkness

Many parents would advise a child that the only way to deal with bullies is to stand up to them. But, on reflection, this simple philosophy is not practical and can be dangerous. What if the bully is much bigger and stronger? What if there is a group of bullies? What if the bully is an adult? What if the bully is a teacher? Bullying in school is not a simple problem. It extends beyond students and includes the whole school community. Schools are being challenged to expand their thinking about what is involved in creating a more respectful and tolerant school culture. Despite state requirements that bullying policy and programs address the culture of the entire school, many school programs target only the student behavior. Scrambling to meet state requirements to provide researched and proven strategies to address the problem of bullying, schools are using the resources available.

The bulk of research and the resulting program models have been limited almost exclusively to student behavior. Students are the most important emphasis in any school but they are not alone in shaping its culture. Teachers, coaches, and administrators are at the forefront in implementing change and creating a culture of respect. Change begins with school leaders modeling respectful behavior; supporting a no-tolerance approach to bullying; and deploying anti-bullying strategies.

The behavioral expectations for students that promote tolerance and respect should apply equally to the school staff. School efforts to intervene in and prevent bullying should apply to all members of the school community. Preliminary research indicates that the same standards are not being applied or enforced when the bully is a teacher.

Dr. Alan McEvoy, professor of sociology at Northern Michigan University, is a leading authority on harassment and bullying. He has been a pioneer in research that focuses on teacher (and coach) bullying. In a recent interview Dr. McEvoy shared his views and research findings, including his pilot study, Teachers Who Bully Students: Patterns and Policy Implications.

"Bullying by teachers is enabled by a conspiracy of silence."
- Dr. Alan McEvoy

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Q: What are the similarities between teacher bullies and student bullies?

A: "Teacher bullying is a common problem that exists in most schools," said McEvoy. His research found that 93 percent of the 236 teachers and students surveyed reported that teacher bullying occurred in school and the subjects were in agreement regarding who the bullies were within a school. Results from his follow-up study supported these results as well. According to McEvoy, when teachers bully it often involves public humiliation. Teacher bullying most often occurs in front of a classroom of students. "Bullying by teachers is enabled by a conspiracy of silence," he noted. Students are often hesitant to report because they fear that disclosure will lead to reprisal. Though McEvoy's research did not quantify this, many of the narrative answers clearly showed that the respondents were afraid:

"Nothing happened after I complained, but since I knew that my teacher knew I complained, I was scared to go to class."

"I felt the teacher would hate me."

"Colleagues rarely report bullying because incidents are contained in the classroom, hidden from the observation of other adults," he reported. Additionally, the students and faculty surveyed perceived that there was no effective or meaningful redress for complaints against teachers for bullying; and that there were seldom negative sanctions for teachers who were reported. The perception that school incident reporting and investigation mechanisms are complicated and ineffective perpetuates the silence and secrecy that enables bullying. Teacher bullying has serious emotional and social consequences that undermines the academic and social climate at school. Bullying is a fundamental corruption and violation of the teacher role. Two characteristics, to educate and to protect, are central to that role. Bullying is a violation of both duties. The emotional and social consequences of bullying carry over and adversely affect the victim's performance in other classes and school activities. The student's relationships with other teachers and students are disordered. "Teacher bullying often includes the tacit approval of the group," McEvoy observed. Bystanders' silence and/or responses (such as laughter) reinforce the legitimacy of the bullying and create a contagious atmosphere of abuse amplifying the experience of victimization.

Q: What are the differences between teacher bullies and student bullies?

A: Bullying by teachers is rarely physical. Most states have laws that prohibit physical discipline. Additionally, most schools have clear "hands off" policies and procedures that prohibit physical contact with students. Verbal and emotional abuse is a less defined area. A possible exception to this may be athletic coaches. "Active or passive abuses of the athletic training may be employed to cull team players—for example, when a football coach encourages larger team members to 'go after' (i.e., take cheap shots or physically hurt) another weaker athlete to get him to quit the team," said McEvoy. "Bullying by teachers is almost always done in the context of the legitimate role of the teacher to motivate or discipline the student," he said. "This masks the true nature of the behavior." For example, a student may be singled out for ridicule or correction repeatedly in front of the class; assigned detentions or other legitimate sanctions; and even poorly graded. Bullying occurs when these legitimate functions are applied unfairly and inconsistently. There is a "gray line" between when discipline and motivational techniques become excessive. Because of the lack of definition regarding the proportionate and appropriate application of discipline and motivation, reported incidents are frequently denied

Education Teachers

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and defended. "When confronted with a complaint of bullying, the action is justified as a legitimate discipline or motivational measure," noted McEvoy. "Student bullies know what they are doing and that it is wrong," he said. "Teacher bullies may not fully recognize the harm they are doing." Once accused of crossing the line, many teachers sincerely contend that they were acting in the best interest of the class or student. Most schools today recognize that student-to-student bullying is a serious problem. In response, many schools have developed policies and procedures and have implemented programs to prevent bullying and promote a respectful school climate among the students. "There is a conspicuous absence of school policies and procedures dealing with teacher bullying," said McEvoy.

Q: Why is teacher bullying a critical issue for a school community?

A: "It is the function of the school to educate," said McEvoy. "Effective teaching is dependent on establishing effective and positive social and emotional relationships with students. Bullying by teachers interferes with and can destroy the development of such relationships and thereby disrupt learning."

"Accommodations also need to be made for students who feel they are being bullied," according to McEvoy. Schools can build flexibility into their programs to enable students to leave a class or situation that makes them uncomfortable without the repercussion of losing credit or missing work. Online learning opportunities, transferring to another class, or other accommodations should be made available.

The mechanisms exist for schools to address the problem of teacher bullying. Incident reporting and investigation are ingrained in our school systems for other kinds of behavior like sexual harassment claims. These existing policies and procedures can be reviewed and adapted to the problem of teacher bullying.

New Jersey is known to be a highly litigious state. Challenging a tenured teacher provokes fear of union involvement and expensive law suits. While these are realistic concerns for schools in the midst of cuts that limit staff time and district funding, school boards do have the authority to stand up to bullies by creating policies that can be effectively enforced. The topic needs to be addressed and the dialog needs to begin. A culture of respect can only be created when the entire school community—including teachers and administrators—supports the fair and consistent application of behavioral expectation.

Jean Harkness is a policy consultant with New Jersey School Boards Association's Legal & Policy Services Department. She can be reached at jharkness@njsba.org. Reprinted with permission from the November/December 2010 issue of School Leader magazine. Copyright 2010 New Jersey School Boards Association. All rights reserved.

This entry is filed under Features, Parents, Professionals, Teachers and tagged Bullying, FAPE, Feature, Liability, parents, professionals, School Administration, Special Education, Teachers.

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DELAWARE STATE SENATE
146th GENERAL ASSEMBLY

SENATE BILL NO. 257

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO ASSISTANCE WITH
MEDICATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend §1921(a)(17), Title 24, Delaware Code, by making insertions as shown by underlining as
2 follows:

3 (17) Educators, coaches, or persons hired or contracted by schools serving students in kindergarten through grade
4 12 who assist students with medications that are self-administered during school field trips and approved school activities
5 outside the traditional school day or off-campus that have completed a Board of Nursing approved training course
6 developed by the Delaware Department of Education;

7

SYNOPSIS

This Act expands the ability of persons to assist in the administration of medications to students by including coaches or persons hired or contracted by schools serving students in kindergarten through grade 12. The Act also provides for the assistance of medication during approved school activities outside the traditional school day and off-campus activities.

Author: Senator Hall-Long



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How to Appeal if Your Services Are Ending

Contact us at **1-866-475-9669**.

If you think your Medicare-covered skilled nursing facility (SNF), home health agency (HHA), comprehensive outpatient rehabilitation facility (CORF), or hospice services are ending too soon, you can appeal to Quality Insights. We will look at your case and decide if your health care services need to continue. Here is what you need to know:

1. While you are getting SNF, HHA, CORF, hospice, or hospital swing bed services, you should get a notice called, "Notice of Medicare Provider Non-Coverage" at least 2 days before covered services end. You (or your representative) must sign this document. If you don't get one, ask for it.
2. If you disagree with the facility's assessment that you no longer need care, contact Quality Insights and request a review no later than noon of the day following your receipt of the "Notice of Medicare Provider Non-Coverage." Follow the instructions on the notice to do this.
3. If you miss the deadline for requesting a fast appeal, you may still ask us to review your case, but different rules may apply.
4. Once you file your appeal, we will notify the provider. By the end of the day, the provider will give you a document called a "Detailed Explanation of Non-Coverage." This will explain why the facility believes your services are no longer covered.

Our Review Findings


If we decide you're being discharged too soon, Medicare will continue to cover your SNF, HHA, CORF, hospice, or hospital swing bed services for as long as medically necessary (except for applicable coinsurance or deductibles).

If we decide that your services should end, you won't be responsible for paying for any SNF, HHA, CORF, hospice, or hospital swing bed services provided before the termination date on the "Notice of Medicare Provider Non-Coverage."

If you stop getting services on or before the coverage end date on your "Notice of Medicare Provider Non-Coverage," you won't have to pay after you stop getting services. If you continue to get services after the coverage end date, you may have to pay for those services.

More Information

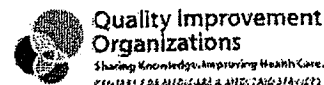
If you have questions about your rights regarding SNF, HHA, CORF, hospice, or hospital swing bed services, including appealing our decision, getting notices, or learning about rights after missing the filing deadline, call us at 1-866-475-9669. You can also call 1-800-MEDICARE (1-800-633-4227) to be placed in touch with us.

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Medicare Consumers > Your Medicare Rights > Quality Complaints

Quality Health Care is your Medicare Right

For more information, contact 1-800-MEDICARE or contact us at 1-866-475-9669.

If you believe you are not receiving or did not receive good care, you can file a complaint with Quality Insights. We are authorized by Medicare investigate your case and issue an opinion. If we find your complaint is valid, we are also authorized to work with the physician or facility to implement improvements that benefit all patients.

We can review care provided in the following settings:

- Hospitals (including emergency departments)
- Skilled nursing facilities (also called nursing homes)
- Rehabilitation facilities
- Outpatient surgery centers
- Doctor's offices
- Home health agencies

How to File a Complaint

To file a complaint, start by calling 1-800-MEDICARE.

Next, ask to be referred to Quality Insights of Pennsylvania, the Medicare Quality Improvement Organization, to discuss a quality of care complaint.

You will then be transferred to our representative who can assist you every step of the way. This includes providing you with information about:

- The documentation we need from you to begin a review (we must receive your complaint in writing)
- The review process
- Potential outcomes of the review


Important Information

- While we can guide you through the process on the telephone, we must receive all complaints in writing
- You can anonymously file a complaint, but if you want to know the result of the complaint, you must be willing to use your name.
- We can only review complaints about the quality of your medical care using information contained in your medical records. We cannot review cases related to comfort or convenience (for example, "my food was not good" or "the staff was rude to me").
- Our review process will take three to six months.
- Everyone with Medicare has the right to file a complaint, even if you are enrolled in a Medicare Advantage Plan.

Our Findings

If our review finds a problem with your quality of care, we will work with the facility or doctor to suggest ways to handle the same situation in the future. This will ultimately improve care for other patients.

In rare cases, we may recommend that a facility or doctor be removed from the Medicare program. We only do this as a last resort after trying to work with the doctor or the health care facility to correct the problem. We do not wish to punish doctors but are ultimately concerned with the quality of care received you and other people with Medicare.

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Medicare Consumers > Your Medicare Rights

Safe, High Quality Care: We Can Help

For more information, call 1-800-MEDICARE or contact us at 1-866-475-9669.

Just like you, more than two million people in our state enjoy the benefits of Medicare each and every day. But what you might not know is that you have federally protected rights under the program. This includes the right to receive all of the care medically necessary to treat your condition and the right to appeal decisions about your coverage.

For a comprehensive look at all of your Medicare rights, we encourage you to download and review the following publication from Medicare.

- Your rights and protections under Medicare

We also encourage you to explore this site and learn about Quality Insights, your local Medicare Quality Improvement Organization (or QIO for short).

Your QIO

As a QIO, Quality Insights plays an important role in protecting your Medicare rights. If you believe you are not receiving all of the care necessary to treat your condition, or if you believe you received poor quality of care, we can help. You can appeal your case to us if you believe:

- Your hospital admission has been wrongfully denied
- You are being discharged from a hospital before you are medically ready
- Your Medicare-covered skilled nursing facility (SNF), home health agency (HHA), comprehensive outpatient rehabilitation facility (CORF), or hospice services are ending too soon

Additionally, we can investigate if:

- You believe you received poor quality of care

Click on any of the links above to learn more. We are here to help ensure you receive the highest quality care possible. All of our services are free to you.

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11003.7.5 Income Eligible/Education and Post-Secondary Education

Parents/caretakers who participate in education and post-secondary education can receive income eligible Child Care for the duration of their participation as long as:

- A. their participation will lead to completion of high school, a high school equivalent or a GED; or
- B. their participation in post-secondary education was part of a DSS TANF Employment and Training program; or
- C. their participation in post-secondary education began while participating in the DSS Food Stamp Employment and Training (FS E and T) program; and
- D. there is a reasonable expectation that the course of instruction will lead to a job within a foreseeable time frame, such as nursing students, medical technology students, secretarial or business students.

DSS will not authorize child care services for parents/caretakers who already have one four year college degree or are in a graduate program.

9 DE Reg. 572 (10/01/05)

10 DE Reg. 1007 (12/01/06)