DISABILITIES LAW PROGRAM

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MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman

Re: Recent Legislative & Regulatory Initiatives

Date: April 10, 2017

Consistent with the requests of the SCPD, GACEC, and DDC, I am providing analyses of fourteen (14) legislative and regulatory initiatives in anticipation of the April 13 meeting. Given time constraints, the analyses should be considered preliminary and non-exhaustive.

1. DMMA Final DHCP Vision Coverage Reg. [20 DE Reg. 805 (4/1/17)]

The SCPD and GACEC commented on the proposed version of this regulation in February, 2017. A copy of the February 21, 2017 SCPD memorandum is attached for facilitated reference. The Councils endorsed the proposed initiative to offer vision services to a subset of enrollees in the Delaware Healthy Children Program (DHCP).

The Division of Medicaid & Medical Assistance has now acknowledged the endorsements and adopting a final regulation which conforms to the proposed version. Since the Council-endorsed regulation is final, no further action appears warranted.

2. DSS Final Purchase of Care-Licensed Exempt Provider Reg. [20 DE Reg. 810 (4/1/17)]

The original proposed version of this regulation was published in December, 2016 as a DMMA initiative. It was then republished in February as a DSS initiative. The SCPD and GACEC submitted similar comments on both versions. A copy of the February 21, 2017 SCPD memorandum (minus attachments) is attached for facilitated reference. The Division of Social Services is now adopting a final regulation with some edits prompted by the commentary.

The Councils offered three (3) recommendations.

First, consistent with a federal regulation, the Councils suggested that DSS provide the rationale for retaining two (2) exemptions from licensing. DSS provided a lengthy rationale in the final regulation. At 812.

Second, the Councils suggested that DSS resolve the inconsistency between sections stating that "all providers receiving Purchase of Care (POC) funding must now be licensed..." while still exempting two (2) classes of providers. In response, DSS revised the summary in the regulation to eliminate the conflict. At 812.

Third, the Councils suggested that DSS provide the rationale for deleting the authorization category "double time (D) which is two days". In response, DSS provided the following rationale:

> The double time code was originally intended for providers who kept children for a 24 hour period. As this practice would now be a violation of licensing regulation DSS removed the code from its eligibility system.

At 812.

Since the regulation is final, and DSS addressed each recommendation proffered by the Councils, no further action appears warranted. Parenthetically, DSS incorporated a few revisions prompted by comments submitted by the DSCY&F Office of Child Care Licensing.

3. DOE Final Unit Count Regulation [20 DE Reg. 799 (4/1/17)]

The SCPD and GACEC commented on the proposed version of this regulation in February, 2017. A copy of the February 21, 2017 memorandum is attached for facilitated reference. The Department of Education is now adopting a final regulation with a few edits prompted by the commentary.

First, the Councils observed that a reference to receipt of prior comments on the regulation was odd/unusual. The DOE responded that it was referring to a pre-publication process.

Second, the Councils recommended that students not assigned to a specific grade be reported in a grade appropriate for their age, not their instructional level. The DOE declined to effect an amendment based on the following somewhat cryptic rationale:

> The Department kept the existing language which includes reporting students by age and "instructional level" as there are instances where it does not always include students with disabilities, and where flexibility is needed in reporting an instructional level.

At 799.

Third, the Council recommended changing a reference to §7.1 to §7.0. The DOE agreed and adopted the revision.

Fourth, since districts are permitted to include children in their unit count if temporarily in Stevenson House or the NCC Detention Center, the Councils suggested adding an additional reference to 18-21 students in DOC pre-trial settings. The DOE expanded the reference to include students in all DSCY&F facilities but did not expand the reference to include adult students in DOC pre-trial settings.

Fifth, the Councils noted that the regulation did not cover the unit count for students in the adult prison system. The DOE responded that such students "are funded through the Budget Bill/Adult Prison education and thus not included in the K-12 unit count or this regulation". At 800.

Since the regulation is final, and the DOE responded to each comment proffered by the Councils, no further action appears warranted.

4. DFS Prop. Family & Lg. Family Child Care Homes Reg. [20 DE Reg. 775 (4/1/17)]

The Division of Family Services (DFS) proposed to revise a single section (addressing fire extinguishers) in its standards covering family and large family child care homes. The rationale is as follows:

> Currently Section 22 exceeds the National Fire Protection Association's (NFPA) Life Safety Code and does not provide clarification on the placement of a fire extinguisher. The proposed Section aligns with the Life Safety Code and provides clarification on the placement of a fire extinguisher.

At 776.

I have the following observations.

First, the revision explicitly disallows placement of the required fire extinguisher in a cabinet or closet. This is a well intentioned change since a "hidden" extinguisher is of little value in an emergency. However, the literal ban on mounting an extinguisher "in a cabinet" would disallow use of even a recessed fire-rated cabinet on a wall. See attached descriptions of OVAL and Larsen brand systems. The advantage of such a recessed or low-protrusion cabinet is that it is compatible with ADA standards disallowing objects from protruding more than 4" from walls between 27-80" above the floor. See attachments. DFS should consider modifying its standards so mounting in such a cabinet would be permitted, if not encouraged.

Second, the other material change is to add more discrete standards for the height of mounting the extinguisher based on its weight. The current standard (being deleted) requires all fire extinguishers to be mounted no more than 40 inches above the floor. Under the proposed standard, heavier units could not be hung more than 42 inches from the floor while lighter units could be hung up to 60 inches from the floor. I infer the rationale is that the combination of a heavy unit and high mounting could make access difficult for individuals who are short in stature or lacking strength. While such differentiation has some facial validity, DFS may wish to adopt a uniform standard, i.e., either retaining the current 40" standard or adopting a 42" standard for all fire extinguishers. My rationale is as follows:

A. A uniform standard is easier to follow and enforce.

B. The 42" standard is very close to the current 40" standard so licensees should be comfortable with the minor change.

C. Expecting individuals to heft a 39 lb. fire extinguisher hung 60 inches from the ground in an emergency presents a safety concern. I suspect that many licensees would be hard-pressed to safely remove a 39 lb fire extinguisher from a 5 foot wall mount. An unsuccessful attempt could lead to the extinguisher falling on the worker or a nearby child.

D. Individuals with disabilities (e.g. wheelchair users) may not be able to reach extinguishers mounted at high levels. The standard thus has an adverse impact on safety (if the licensees uses a wheelchair) and employability (if applicant who uses a wheelchair applies for a job in a child care home). Adopting a 42" height standard would ostensibly be compatible with ADA guidelines while the proposed 60" standard would not be compatible with ADA guidelines. See attachments.

Third, the proposed standard is ambiguous on the mounting height. Compare attached New Hampshire Fire Marshall interpretation of NFPA 10, i.e. mounting distance is to "top of the extinguisher". The DFS proposed standard could be interpreted as "hook" or "fastener" height.

Fourth, there is a grammatical error in the first line, i.e., "visibly" should be "visible".

The Councils may wish to consider sharing the above observations with the Division. The Councils could consider sharing a courtesy copy with the State Fire Marshall and the Architectural Accessibility Board and recommending that DFS consult both entities prior to adopting a final regulation.

5. DPH Proposed DMOST Regulation [20 DE Reg. 770 (4/1/17)]

The Division of Public Health proposes to adopt a brief amendment to its regulations covering Delaware Medical Orders for Scope of Treatment (DMOST). Section 2.1.1 would be amended to clarify that the DMOST form's identification section must include the patient's address of record, phone number, and gender. The form (attached) already included these fields but the regulation did not require their inclusion. The proposed amendment is benign and essentially a "housekeeping" initiative.

The Councils may wish to consider endorsement.

6. DOE Prop. Instructional Program Requirements Reg. [20 DE Reg. 752 (4/1/17)]

The Department of Education proposes to adopt some discrete amendments to its instructional program standards.

I have the following observations.

In general, the current regulation lists several curricular categories (e.g. math, science, social studies) and requires public schools to provide instructional programs in each category. The proposed amendment would insert a requirement in each category that it align with the DOE's standards and grade level performance expectations. I infer that the additional language reflects existing public school duties. Even charter school programs must be aligned to Delaware Content Standards, State program requirements, and State graduation requirements. See Title 14 Del.C. §512(6).

Since the amendments are ostensibly reiterations of existing law and practice, the Councils may wish to comment that they reviewed the initiative and did not identify any concerns.

7. DOE DIAA High School Interscholastic Athletics Reg. [20 DE Reg. 762 (4/1/17)]

The Delaware Interscholastic Athletic Association proposes to amend several regulations covering student participation in high school sports.

I have the following observations.

1. Section 2.4.4.1.4.2 disallows a student who participated in athletics and then transfers more than one time in his first two years of eligibility from playing any sport for 90 days. While barring the student from playing the same sport is intuitive, barring the student from playing a new sport is not intuitive. If one assumes that athletic activity is advantageous to a student's well being, it is ostensibly "overkill" to disallow a student from engaging in all athletic activities unrelated to sports played at the former school.

2. Section 2.4.7 disallows a student transferring to a "choice" school in grades 10-12 from participating in any sport offered at the former school even if the student did not participate in any sports at the former school. If one assumes that athletic activity is advantageous to a student's well being, the justification for this ban is difficult to understand. If a student played no sports at the prior school, it makes little sense to ban the student from playing in any sport offered by the prior school for a full school year. Students should not be penalized for opting to attend a "choice" school as allowed by law.

3. Section 2.7.3. authorizes the DIAA to grant hardship waivers based on the cap on years of participation. There are two concerns with this section. First, the U.S. DOE Office for Civil Rights touts many advantages to participation in athletics for disabilities. See attached January 25, 2013 OCR guidance at 1. The IDEA encourages schools to include extracurricular activities (including athletics) in IEPs. See 34 C.F.R. §300;320(a)(4) and 14 DE Admin Code 925.20.1.4.2. The IEP team would therefore be a primary decision-maker in the context of participation in athletics. This concept is omitted from the regulation. By analogy, each district typically has a transportation director who determines a student's eligibility for a school bus and assignment to a bus stop. Since transportation is a special education related service, the IEP team (generally in consultation with the transportation director) determines how transportation will be provided for special education students. In the event of disagreement, the IEP team decision prevails. The same concept applies to participation in IEP-listed athletics. The IEP team is the primary decision-maker concerning participation in IEP-listed athletics. Second, imposing a "burden of proof" on a student with an IEP to justify participation in athletics is a foreign concept in special education. The IEP team would deliberate and make a decision typically by consensus. There is no "burden of proof" in the IEP context.

4. The DIAA is involved in the State's unified sports program. Cf. H.B. No. 175 from 148th General Assembly for description and attached articles. The regulation does not address how participation by students with disabilities is affected by participating in unified sports. For example, if a student with a disability plays in 1 unified sports scrimmage, does that count for one year of the participation cap under §2.7? The DIAA could consider inserting an exception for students with disabilities participation in unified sports from counting towards the participation cap in §2.7.

The Councils may wish to share the above observations with the DIAA and the DOE Special Education Director.

8. DLTCRP Prop. Neighborhood Home Reg. [20 DE Reg. 766 (4/1/17)]

The Division of Long Term Care Residents Protection (DLTCRP) proposes a full revision of the standards applicable to DDDS neighborhood homes.

I have the following observations.

1. DHSS should consider joint promulgation of regulations by both the DLTCRP and DDDS. By statute, DDDS is authorized to promulgate regulations covering neighborhood homes. See 29 Del.C. §7909A© (1) and (e). In the past, the DLTCRP and DDDS jointly promulgated the neighborhood home regulations. See 15 DE Reg. 968 (January 1, 2012). Sole promulgation by DLTCRP may render the regulations vulnerable to question in any enforcement action.

2. In §1.0, the definition of "authorized representative" merits revision. On the one hand, it appears to limit an "authorized representative" to someone acting on behalf of a resident lacking decision-making capacity in the first and last sentences. On the other hand, it includes someone appointed under a POA, AHCD, or supportive decision-making agreement - all of which require the resident to have capacity. This is confusing. The section should be revised to encompass anyone authorized by law to act on the resident's behalf.

3. In §1.0, definition of "person centered plan", the grammar in the second sentence is incorrect. The list inconsistently includes nouns (people; strategies) and verbs (uses; offers). Compare the attached §7.3 from the Delaware Administrative Code Drafting & Style Manual.

4. In §3.2.1, insert "at least" prior to "annually". Otherwise, a licensee could argue that DHSS can only conduct one inspection annually, i.e., there is a regulatory "cap" of one inspection annually.

5. In §4.2.15, a total ban on firearms on the premises of a neighborhood home could be challenged under the Second Amendment and the Delaware Constitution. See attached March 14, 2014 News Journal article describing Delaware Supreme Court ruling that WHA cannot limit firearms in common areas. See also Title 16 Del.C. §1121(25) and (29). The DLTCRP may wish to seek guidance from the Attorney General's Office in this context.

6. The Division should consider adding a subsection to §5.4 which currently contemplates submission of plans only to DHSS. Under certain circumstances, the premises would be subject to review by the State Architectural Accessibility Board. See Title 29 Del.C. §7303.

7. The only accessibility references in Section 5.4 are in the context of ramps. See, e.g, §§5.4.6 and 5.4.6.2. This is highly underinclusive. For example, a ramp for ingress and egress is of little use if doorways are narrow or bathrooms are inaccessible. A general reference at §5.6 is rather cryptic. The CMS Rule contemplates that "the setting is physically accessible to the individual" overall. See 42 C.F.R. 441.710(a)(1)(B).

8. Section 5.4.6 only requires a ramp if accommodating individuals who regularly require wheelchairs. One problem with this approach is that providers have no incentive to have accessible sites and individuals using wheelchairs are disproportionately excluded from the neighborhood home network. A second problem with this approach is that visitors using wheelchairs cannot enter the home.

9. There is some "tension" between §5.9.5 (requiring doors to be capable of being opened from either side at all times) and §5.10.7 (requiring lockable doors). The CMS Community Rule promotes resident privacy, including doors "lockable by the individual, with only appropriate staff having keys to doors". See 42 C.F.R. 441.710(a)(1)(B).

10. Section 5.10.12 limits bedrooms to no more than two (2) individuals. It would be prudent to include a subsection noting that residents have some choice in roommates. See Title 16 Del.C. §1121(28). The CMS Rule is even more affirmative: "Individuals sharing units have a choice of roommates in that setting." 42 C.F.R. 441.710(a)(1)(B).

11. Section 6.2 contemplates manual entries in a medication administration record. If electronic entries are permissible in a data base (e.g. in THERAP), then this section may merit revision.

12. Section 6.8.3.1 merits review. It generally includes elopement as a reportable incident only if an individual's whereabouts are unknown and the individual suffers harm. Many behavior plans include restrictions (e.g. line of sight or supervision standards). Section 6.8.3.1 does not account for violations of behavioral plans. Thus, an individual restricted to line of sight due to sex offenses could elope and the agency would not have to report the occurrence.

13. Section 6.8.4.2 characterizes injuries resulting in transfer to an acute care facility as a reportable incident. At a minimum, I recommend including "urgent care" facilities in this section. Anecdotally, I understand that a provider may have opted to take injured individuals to urgent care facilities to inferentially avoid reporting incidents. By analogy, the DSCY&F requires its providers to report any injury resulting in medical/dental treatment other than first aid provided on-site. See 9 DE Admin Code 103.15.22 and 103.32.0. This is manifestly a more protective standard.

14. Section 7.4 could be improved by incorporating the ADA standard that there should be no protrusion from the wall in excess of four inches. See attachments related to fire extinguishers.

15. Section 9.1.5 is overly restrictive in requiring all prescribed medications to be kept locked in a cabinet or lock box. An individual with asthma could not keep an emergency inhaler in his personal possession. An individual with dry skin could not keep a prescription skin moisturizer in his personal possession. The standard is also too brittle if staff are trying to train an individual to monitor and self-administer medications in anticipation of developing greater independence. Restricting access to an individually prescribed medication is not "normal" and the blanket policy of locking all prescribed medications may violate the CMS Community Rule. If there are less intrusive methods to achieve safety, they should be considered and restrictions only allowed if included in the person-centered service plan. See 42 C.F.R. 441.530 and 441.710(a).

16. I did not notice a "waiver of standards" provision analogous to the current regulation, §12.0. If this is an oversight, the Division may wish to include a comparable provision.

The Councils may wish to consider sharing the above observations with the DLTCRP and DDDS. Since the application of the CMS Community Rule is implicated in multiple standards, the Councils could also consider sharing a copy of any comments to the State Medicaid Director.

9. H.B. No. 90 (Early Voting)

This bill was introduced on March 22, 2017. As of April 10, it awaited action by the House Administration Committee. It is part of a legislative package designed to improving voter turnout. See attached excerpt from Delaware House Democrats "Leg Hall Insider" (March 27, 2017).

As background, thirty-seven (37) states and the District of Columbia authorize early voting prior to an election. See attached National Conference of State Legislatures article. The average early voting period is nineteen (19)days. Id.

H.B. No. 90 would authorize early voting in Delaware elections "for at least 10 days" (line 4). Polling locations would be published at least 30 days in advance (line13). For statewide elections, at least 1 site would be required for each county and the City of Wilmington (lines 14-15). The bill would be effective January 1, 2020. The attached fiscal note reflects a modest cost ($128,000) beginning in FY21.

The advantages of early voting include a reduced need for absentee ballots and flexibility, especially since voting would be authorized on weekends. The enhanced flexibility would benefit persons with disabilities whose health status may fluctuate from day to day. The enhanced flexibility would also benefit caregivers of persons with disabilities who could schedule voting at an opportune time.

However, the bill would benefit from a clarifying amendment. The bill specifically incorporates the procedural protections in Chapter 49 to the early voting process (line 9). This would include provisions authorizing assistance to voters with disabilities and authorizing voter complaints (15 Del.C. §§4943 and 4990-4991). However, it does not specifically incorporate a statutory requirement that each polling place conform to the statutory accessibility standards of 15 Del.C. §4512. If the Commissioner designated an inaccessible polling location as the sole early voting site in a county, the effect on persons with disabilities could be quite serious. This prospect could easily be obviated by a simple amendment, i.e., inserting the following sentence after "election." in line 14: "The Commissioner shall only designate locations which comply with §4512 of this Title."

The SCPD may wish to consider endorsement contingent upon incorporation of the above amendment in the bill.

10. H.B. No. 63 (Absentee Voting)

This bill was introduced on March 9, 2017. As of April 10, it awaited action by the House Administration Committee. Since it amends the Delaware Constitution, the legislation would have to be adopted by a 2/3 vote in successive General Assemblies to take effect.

I have the following observations.

First, the Delaware Constitution is somewhat prescriptive in authorizing absentee ballots. For example, it contemplates use of absentee ballots based on "sickness or physical disability" but omits any reference to "mental disability". This bill would remove limitations and allow the General Assembly to enact laws covering qualifications for the use of absentee ballots.

Second, the bill is identical to H.B. No. 20 from the 147th General Assembly and H.B. No. 105 from the 148th General Assembly. The SCPD and GACEC endorsed both of the prior bills. In 2013, a 27-14 vote on the bill in the House fell one vote short of the 2/3 benchmark. See attached April 17, 2013 Delaware News Journal article. In 2015-16, the legislation was released from the House Administration Committee but received no formal House vote. Parenthetically, the attached article offers some supplemental background on the initiative. It quotes the prime sponsor's comment that "it's wrong that Delaware law currently allows a disabled person to vote absentee but could bar that person's full-time caregiver from doing the same." The article also notes that twenty-seven (27) states allow "no excuse" absentee voting. The attached National Conference of State Legislatures article is corroborative, i.e., twenty-seven (27) states and the District of Columbia have "no excuse" absentee voting.

The Councils could consider endorsement. The majority of states authorize use of absentee ballots for any reason and the Delaware Constitution does not authorize absentee ballots based on mental disability or caretaker status. A courtesy copy of any commentary could be shared with the Election Commissioner.

11. H.B. No. 100 (Substance Abuse Treatment)

This legislation was introduced on March 23, 2017. It passed the House on April 4, 2017. As of April 10, it awaited action by the Senate Health, Children, & Social Services Committee. The attached fiscal note indicates that the Department of Justice would use existing funds derived from its Consumer Protection Fund to cover the costs of implementation. The legislation would "sunset" on January 1, 2020 unless reauthorized prior to that date.

The bill seeks to address insurer denial of substance abuse treatment, in whole or in part, including refusal to approve an appropriate type or duration of treatment (lines 5-7). The legislation posits that many insured individuals lack the means to challenge such denials (lines 13-14). The Delaware Department of Justice would be authorized to use Consumer Protection Funds to provide legal and expert assistance to such aggrieved individuals (lines 22-33). Assistance could include direct representation as well as retention of auditors and experts (lines 24 and 37-40). Insurers subject to the jurisdiction of the Delaware Insurance Commissioner would be required to include disclosure of the potential availability of DOJ assistance in written grievance forms (lines 51-53). DHSS would be required to ensure that Medicaid beneficiaries receive similar notice of the potential availability of DOJ assistance (lines 69-74).

I have the following observations.

First, the scope of the private insurers required to provide the notice would ostensibly be limited to those insurers subject to Delaware Department of Insurance jurisdiction. As the Synopsis recites, employer-funded health benefit plans are typically exempt from state regulation. I believe that most health insurers providing coverage in Delaware are covered by federal ERISA and therefore exempt from the jurisdiction of the Delaware Department of Insurance. However, the DOJ could still provide valuable assistance to aggrieved individuals under private plans not regulated by the Delaware Department of Insurance (line 25 and Synopsis).

Second, there is some potential for a conflict of interest since the DOJ represents the State Medicaid agency, the Division of Medicaid & Medical Assistance (DMMA). The Medicaid MCOs are State contractors who are acting on behalf of the State. This potential conflict is mitigated in the Fair Hearing context since the MCO, not DMMA, presents the case and defends its decision. See 16 DE Admin Code 5304.3. However, a potential also arises in the following contexts:

A. A State DMMA employee serves as 1 of 3 decision-makers for internal MCO appeals. See attached excerpt from DMMA-MCO contract, §3.15.3.2.8.

B. DOJ advocacy to secure enhanced substance abuse services for a Medicaid beneficiary may result in fiscal obligations of the State Division of Behavioral Health Services or State Division of Substance Abuse & Mental Health which are represented by the DOJ. See attached excerpt from DMMA- MCO contract, §§3.4.10.9.1, 3.4.10.9.2, 3.8.9.9 and 3.8.9.10 and Appendix 1.

Third, the Synopsis suggests that the Sunset provision is intended to permit assessment of the efficacy of the bill. Apart from authorizing DOJ assistance to individuals denied substance abuse treatment, policymakers could also consider supplemental options. For example, legislation or regulations could be prepared to:

A. uniformly impose the burden of proof and persuasion on the insurer/MCO in disputes concerning substance abuse treatment;
B. make the opinion of the treating prescriber controlling unless clearly erroneous as documented by production of clear and convincing evidence;
C. require any benefit of doubt regarding prescribed substance abuse treatment to be resolved in favor of eligibility; and/or
D. encourage a robust independent medical assessment if substance abuse treatment is denied (consistent with attached §3.4.7 of DHSS-MCO contract).

Compare H.B. No. 459 from the 142nd General Assembly.

The Councils may wish to consider endorsement while noting that policymakers could also consider supplemental approaches to addressing denials of substance abuse treatment. A courtesy copy of any comments should be shared with the Attorney General.

12. H.B. No. 70 (Cursive Writing)

This bill was introduced on March 9, 2017. As of April 10, it had been released from the House Education Committee and awaited action by the full House. It is similar to H.B. No. 52 from the 148th General Assembly. That legislation was released from committee but did not receive a House vote. The SCPD and GACEC endorsed the predecessor bill.

Background is provided in the attached March 17, 2017 News Journal article supplemented by articles from the national press. In a nutshell, Common Core standards do not require students to learn cursive writing. This has prompted a growing number of states to react by adopting legislation requiring or encouraging cursive instruction. At least fourteen (14) states have adopted cursive proficiency in public schools laws. See attached March 5, 2017 Time Magazine article, "Cursive Is Making a Comeback. Test Your Handwriting Skills with this Quiz". Legislation is pending in other states. See attached articles.

Opponents argue cursive proficiency is unnecessary given the prevalent use of electronic keyboards on computers, phones and pad devices.

Proponents argue that learning cursive enhances brain function, increases fine motor dexterity, allows students to read handwritten and historic documents, and is artistic. Articles addressing writing by hand and brain functioning are attached.

The debate is reminiscent of that over Braille instruction for individuals who are blind or have visual impairments. With screen reader software, text can be read to such individuals. With software such as Dragon Dictate, individuals' verbal dictation in printed on a screen. Thus, detractors of Braille instruction argue it's unnecessary. To the contrary, studies confirm that instruction in Braille increases brain function and is correlated with higher educational and vocational achievement. See attached articles. Although the Delaware Department of Education has proposed regulations omitting Braille instruction, it has been prompted to reinstate standards when reminded that Delaware statutory law requires instruction in Braille. See Title 14 Del.C. §206.

Another analog is instruction of multiplication tables. Given the ready availability of calculators, one could argue there is no need to teach multiplication tables. New Hampshire addressed this concern by adopting legislation in 2015 designed to prompt schools to both teach cursive and memorization of multiplication tables. See attached engrossed legislation.

The Councils may wish to consider endorsement subject to consideration of one clarifying amendment. On the one hand, the bill requires all public elementary schools (which would include charter schools) to teach cursive writing (lines 4-5). On the other hand, the bill only requires local boards of education (not charter school boards) to ensure compliance. For consistency, the bill could be amended by inserting "and charter school board of directors" after "board of education) in line 6. See, e.g., 14 Del.C. §504.

13. H.S. No. 1 for H.B. No. 85 (Charter Schools)

This legislation was introduced on March 28, 2017. As of April 10 it had been released by the House Education Committee and awaited action by the full House. H.A. No. 1 has been placed with the bill.

Background on the bill is contained in the attached March 29, 2017 News Journal article. Existing law allows charter schools to adopt a preference for "students residing within a 5-mile radius of the school". See Title 14 Del.C. §506(b)(3)a. Only two (2) charter schools have adopted the preference, i.e., the Newark Charter School and the First State Montessori School. The main focus of the legislation is the Newark Charter School. Consistent with the article, proponents of the preference posit that the preference is justified "so schools could create a neighborhood atmosphere". Critics counter that the preference "has allowed charters to screen out at-risk kids - including those in poverty - and exacerbated racial and economic segregation".

The current legislation represents a compromise which substitutes an undefined "contiguous area" for the "5 mile radius". According the March 29 article, the effect of the substitution is to allow Newark Charter to give a preference only to the Newark part of the Christina School District and exclude students from Wilmington. However, H.A. No. 1 would strike the proposed "contiguous area" preference.

Similar legislation (H.B. No. 83) was introduced in 2015. It is described in the attached May 4, 2015 News Journal article. However, that bill proposed to both eliminate the 5-mile preference and ban discrimination "against any student in the admissions process because of the student's residence's proximity to the school". The May 4 article included the concern that low-income Wilmington students could not gain admission to Newark Charter:

> Rep. John Kowalko, D-Newark, said Newark Charter's five-mile radius preference leads to de-facto segregation because it is situated in a mostly white, more affluent area of town. Demand for seats in the school is so high - its test scores among the best in the state - that it routinely has lengthy wait-lists which, Kowalko argues, makes it all but impossible for a black, low-income student from Wilmington to get in.

The charter school law already allows a preference for "students residing within the regular school district in which the school is located". See line 10 of the bill. Therefore, if the 5-mile radius preference were stricken, Newark Charter could still have a preference for students of the Christina School District.

Statistics corroborate concerns that Newark Charter's enrollment does not contain the expected percentage of special education, low income, or minority students. Consistent with the attached Department of Education statistics, the following table highlights the discrepancy:

	Newark Charter	Christina School District	State
Special Education Students	5.6%	18.6%	14.4%
White Students	64.9%	28.7%	45%
Low Income Students	7.9%	43.8%	36%

The Christina School District has more than 3 times the percentage of special education students and more than 5 times the percentage of low-income students as the Newark Charter School within its borders. Charter schools are public schools which should not ostensibly be operating as exclusive private schools.

Parenthetically, the exclusionary effect of the "five mile radius" preference is exacerbated by another preference in existing law: "students who have a specific interest in the school's teaching methods, philosophy, or educational focus". See Title 14 Del.C. §506(b)(3)c. Consistent with the attached articles and Attorney General's opinion, the Wilmington Charter School was allowed to exclude students based on scores on a "placement" test and lack of enrollment in honors classes prior to application. Consistent with the attached Delaware Department of Education statistics, the following table highlights the impact on special education, minority, and low income students:

	Wilmington Charter	Red Clay Consolidated School District	State
Special Education	0.5%	12.1%	14.4%
White Students	57.5%	43.6%	45%
Low Income Students	3.7%	35%	36%

A public school's enrolling only a half of 1% of special education students is difficult to defend when the statutory norm is that students are admitted "by lottery in the case of over-enrollment". See Title 14 Del.C. §506(a)(3)b. Moreover, the percentage of low income students in the host district (Red Clay) is almost 10 times the percentage of low income students in Wilmington Charter.

The Councils may wish to consider sharing the above observations and endorsing H.S. No. 1 for H.B. No. 85 if amended by H.A. No. 1. Courtesy copies could be shared with the DOE, Delaware State Education Association, the Attorney General, and the ACLU.

14. H.B. No. 83 (DelDOT Right of Way Maintenance)

This legislation was introduced on March 21, 2017. As of March 28, it awaited action by the House Transportation, Land Use & Infrastructure Committee.

Under current law, the responsibility over many public roads and rights of way is under the "absolute care, management and control of the Department and shall be maintained, repaired and reconstructed by the Department". See lines 7-9 and 51-57. This "absolute" standard disallows counties from enforcing normal maintenance standards designed to facilitate travel.

Consider the following New Castle County examples.

1. Consistent with the attached NCC Property Maintenance Violations overview, bushes, fences, and low tree limbs are not allowed to encroach on a sidewalk.

2. Consistent with the attached NCC Ordinance 302.8.5.3, oversized recreational vehicles and boats can only be parked in the side or rear yard of properties under 2 acres. Otherwise, they would often block a sidewalk if parked in the main driveway.

3. Consistent with the attached NCC Ordinance 4.02.003, dog and cat owners must remove feces deposited by their animals on sidewalks within 1 hour of "deposit".

Persons with disabilities with mobility impairments are disproportionately affected by violations of any of the above standards. Individuals reliant on wheelchairs, canes, or assistive technology cannot simply divert their travel onto a lawn or over a curb. They can typically invoke a consumer-friendly County complaint system to promptly resolve right of way issues violating County standards. Consistent with the attached NCC "Code Enforcement" overview, a Code Inspector responds to complaints and property owners are given 12 days to self-correct prior to issuance of a ticket.

Unfortunately, this standard complaint option is not available if the violation is occurring in a DelDOT right of way. For example, I personally observed a portable basketball hoop system placed for months in a residential curb cut a few years ago in a suburban development. I submitted a complaint to the County but was referred to DelDOT for enforcement since the sidewalk was deemed within DelDOT's jurisdiction. Although DelDOT did resolve the issue, it would have been easier and quicker to use the County complaint system.

H.B. No. 83 would authorize, but not require, counties to adopt and enforce maintenance ordinances in DelDOT rights of way. From a public policy standpoint, there are at least three (3) advantages to approving this authorization.

First, it would facilitate travel by persons with disabilities who could invoke the normal, streamlined county code enforcement system.

Second, it may obviate duplication of government services. In many cases the problem in the right of way may be the "tip of the iceberg". For example, an abandoned property may present several Code violations (high weeds; unsafe conditions; standing water) which are already being addressed by the County. Requiring DelDOT to separately and independently address sidewalk issues is not cost-effective.

Third, county enforcement may save the State money. Consistent with the attached January 16, 2014 News Journal article, DelDOT spent $260,000 to remove snow from sidewalks in one month. If a county ordinance required at least some property owners to remove snow, the State's responsibility would be reduced.

The SCPD may wish to consider sharing the above observations with policymakers.

Addendum

I believe the SCPD submitted an advance set of conforming comments for consideration at the March 21 hearing of the Transportation, Land Use, and Infrastructure Committee. The bill was tabled in committee.

E:legis/417bils
F:pub/bjh/legis/2017p&l/417bils

STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
Margaret M. O'Neill Bldg., Suite 1, Room 311
410 Federal Street
Dover, Delaware 19901
302-739-3621

MEMORANDUM

The Honorable John Carney
Governor

John McNeal
SCPD Director

DATE: February 21, 2017

TO: Ms. Kimberly Xavier, DMMA
Planning & Policy Development Unit

FROM: Ms. Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

RE: 20 DE Reg. 610 [DMMA Proposed Delaware Healthy Children Program Vision Coverage Regulation (2/1/17)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMAs) proposal to expand vision services available to a subset of DHCP beneficiaries. The proposed regulation was published as 20 DE Reg. 610 in the February 1, 2017 issue of the Register of Regulations.

Delaware implements the federal Child Health Insurance Program (CHIP) through the State Delaware Healthy Children Program (DHCP). The DHCP provides health care services to children under age 19 whose families have countable income below 200% of the Federal Poverty Level (FPL). See DMMA Prop. Reg. 17-005b Amendment, §3.1.

The current proposal would expand vision services available to a subset of DHCP beneficiaries. In a nutshell, DMMA plans to contract with a non-profit Medicaid provider to offer free eye exams and glasses on site at Title I Delaware schools in which at least 51% of the student body receives free or reduced price meals. At 611. In FY17, it estimates that 600 children will receive vision exams and 408 children will receive glasses. In FY18, it estimates that 579 children will receive vision exams and 579 children will receive glasses. At 611. The cost to the State would be minimal since the current federal match is 90.94%. At 612. For example, in FY17 DMMA projects a State cost of $6,719 matched by $67,441 in federal funds. Id.

DMMA offers the following justification for the initiative:

Access to vision exams and glasses is critical for students' educational achievements and

health outcomes; 80% of all learning during a child's first 12 years is visual. It comes as no surprise that students with vision problems tend to have lower academic performance, as measured by test scores and grades, and that students' performance in school impacts future employment earnings, health behaviors, and life expectancy. As such, Delaware seeks to use the health services initiative (HIS) option to improve the health of low-income children by increasing their access to needed vision services and glasses through a targeted school-based initiative.

At 611.

SCPD is endorsing the proposed regulation since vision services would benefit low-income children, and the proposal leverages significant federal funds.

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

cc: Mr. Stephen Groff
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

20reg610 dmma-delaware healthy children program vision 2-16-17

STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
Margaret M. O'Neill Bldg., Suite 1, Room 311
410 Federal Street
Dover, Delaware 19901
302-739-3621

MEMORANDUM

The Honorable John Carney
Governor

John McNeal
SCPD Director

DATE: February 21, 2017

TO: Ms. Kimberly Xavier, DSS
Planning & Policy Development Unit

FROM: Ms. Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

RE: 20 DE Reg. 614 [DSS Proposed Purchase of Care-Licensed Exempt Provider Regulation (2/1/17)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services' proposal to amend its regulations applicable to Purchase of Care Providers. The proposed regulation was published as 20 DE Reg. 614 in the February 1, 2017 issue of the Register of Regulations.

As background, the federal Child Care and Development Block Grant funds child care for low-income families who are working or participating in education or training activities. In 2016, new federal regulations were adopted which are prompting DSS to revise its provider standards. The changes will be effective on May 11, 2017.

One significant change is curtailing the scope of providers exempt from licensing. At 615-616. Persons who come into the child's home and relatives who provide care in their own homes remain exempt from licensing. Id. However, the following entities would no longer be exempt:

(1) public or private school care;
(2) preschools and kindergarten care; and
(3) before and after school care programs.

DSS recites that "(t)he final rule requires that all providers receiving Purchase of Care (POC) funding must now be licensed, including those that were previously license exempt, in order to continue receiving POC funding." SCPD could not verify the accuracy of this recital which, read literally, would disallow the exemption of persons coming into a child's home and relatives providing care in their homes. At 414. The federal regulation, with commentary, exceeds 600

pages so it is difficult to confirm the accuracy of the statement without extensive review. It is published at https://s3.amazonaws.com/public-inspection.federalregister.gov/2016-22986.pdf The attached federal regulations (§§98.2 and 98.40) do not categorically require Delaware to remove the current licensing exemption of the above 3 types of entities. However, §98.40 does require DHSS to describe the rationale for any exemptions in its Plan. The regulation does not provide the rationale for retaining the exemption for persons coming into a child's home and relatives who provide care in their home apart from a bare listing of some health and safety standards.

A second change is deletion of an authorization category of "double time (D) which is two days". At 617. The specific rationale for this change is also not provided.

SCPD did not identify any inconsistencies or facial issues in the proposed regulation. However, SCPD has the following observations and recommendations.

First, the regulation could be improved by including the rationale for retaining the 2 exemptions in §11004.4.1 consistent with the attached federal §98.40.

Second, SCPD recommends that DSS resolve the inconsistency between reciting that "all providers receiving Purchase of Care (POC) funding must now be licensed...." and still exempting 2 classes of providers.

Third, SCPD recommends that DSS provide the rationale for deleting the authorization category "double time (D) which is two days".

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

cc: Mr. Ray Fitzgerald
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

20reg614 dss-purchase of care-licensed exempt provider 2-16-17

STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
Margaret M. O'Neill Bldg., Suite 1, Room 311
410 Federal Street
Dover, Delaware 19901
302-739-3621

The Honorable John Carney
Governor

John McNeal
SCPD Director

February 21, 2017

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

RE: 20 DE Reg. 602 [Proposed Unit Count Regulation (2/1/17)]

Dear Ms. Shockley:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposed regulation to readopt its current unit count regulation with no changes. The proposed regulation was published as 20 DE Reg. 602 in the February 1, 2017 issue of the Register of Regulations.

SCPD has the following observations.

At 602.

First, the DOE indicates that public comment was already received on this regulation:

> Public comment was received for this regulation in which the Department of Education was asked to include language that provides more control over how local education agencies use the units they receive. The Department cannot mandate the requested change. Therefore, the regulation is being readopted in its current form.

At 602.

This is an "odd" recital since the regulation has not been published with a solicitation for comments since 2011. See attachment.

Second, the SCPD commented on the same regulation in 2011. The Council endorsed it at that time. See 15 DE Reg. 68 (7-1/11) (final) and attached May 31, 2011 SCPD letter. However, current review has revealed a few contexts in which revision may be warranted as follows.

A. Section 2.3 recites that "(s)tudents not assigned to a specific grade shall be reported in a grade appropriate for their age or their instructional level for purposes of the unit count." I recommend striking "or their instructional level". For example, if a student in a special school (e.g. Leach; Ennis) is functioning several years below age expectations, the student could be reported as a much younger student. A high-school age student could therefore be reported as an elementary level student. Moreover, given the disjunctive "or", schools have the option of reporting based on age or instructional level. This will result in lack of uniformity in statistics. It would simply be preferable to report a student not assigned to a specific grade based on age.

B. Section 4.1.7 addresses pre-kindergarten children. The reference to "7.1" should be revised since there is no §7.1 in the regulation. I suspect the reference should be to "7.0".

C. Section 4.1.5 allows a district or charter school to include students in the unit count if temporarily in Stevenson House or the NCC Detention Center if expected to return to school prior to November 1. The DOE may wish to consider adding an analogous reference covering 18-21 year old students in Department of Correction pre-trial settings.

D. The regulation does not appear to address the operation of the unit count for the adult prison population. The DOE is responsible for provision of special education to students in prison. Cf. 14 DE Admin Code 923.75 I assume such services would be funded in part through qualifying unit count funds.

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

Sincerely,

Jamie Wolfe

Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

cc: The Honorable Steven Godowsky, Ed.D, Secretary of Education
Mr. Chris Kenton, Professional Standards Board
Dr. Teri Quinn Gray, State Board of Education
Ms. Mary Ann Mieczkowski, Department of Education
Ms. Laura Makransky, Esq., Department of Justice
Ms. Terry Hickey, Esq., Department of Justice
Ms. Valerie Dunkle, Esq., Department of Justice
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

20reg602 doe unit count 2-16-17

ADA compliant fire extinguisher installations are easy with Oval

Click here to read an open letter sent to national retailers by Oval Brand on March 29, 2017

Oval's 10 LB portable dry chemical fire extinguishers are less than 4 inches deep, when measured front to back. This unique quality enables easy compliance with the ADA's **4** inch protruding object limit. The 4 inch protrusion rule was implemented primarily to protect people who are blind or have low vision.

The 2010 ADA standards, which went into effect in 2012, also require that accessible fixed building elements such as coat hooks and fire extinguisher hooks be no higher than **48** inches. Many retailers install fire extinguisher hooks higher than 48 inches so that they avoid collisions with shopping carts.

Many state and local building codes also require compliance with the ANSI A117.1, ICC A117.1, and/or IBC Chapter 11 accessible design standards. These standards also limit the protruding object depth to 4 inches and the installation height to 48 inches. Ontario, Canada, is enforcing the same protruding object limits under the AODA.

The IFC® INTERNATIONAL FIRE CODE® also states "Section 1003.3.3 Horizontal projections. Structural elements, fixtures or furnishings shall not project horizontally from either side more than 4 inches (102 mm) over any walking surface between the heights of 27 inches (686 mm) and 80 inches (2032 mm) above the walking surface." Only Oval Brand fire extinguishers always comply with the IFC Section 1003.3.3 protruding object guidelines as they are applied to surface mounted fire extinguisher sizes 5 lbs and larger.

Only Oval provides a fire extinguisher solution which **always** complies with the ADA and local building code for protruding object limits when installed in accordance with both NFPA 10 and the ADA. Oval fire extinguishers, when bumped into, do not easily fall off their hooks either.

...are responsible, solution for your facilities and the people in them.

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Products Submittals, Specs & BIM Contact

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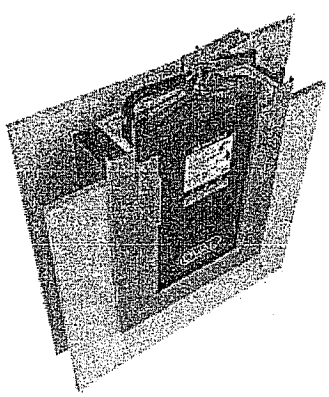
- Never again build out a wall to 6" or 8" simply to accommodate a fire extinguisher
- Fully-recessed cabinets can be installed in a 2-1/2" studded partition or a 6" masonry wall, saving construction costs & valuable real estate

More Secure Mounting

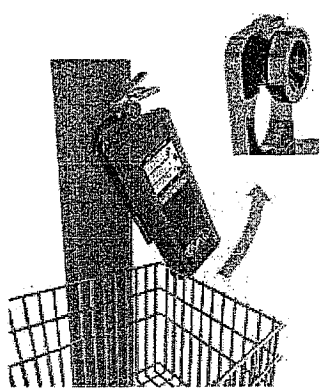
- Our patent-pending button hook is the most durable and safest design available
- Our button hook design allows the extinguisher to rotate nearly 90° in either direction without falling, reducing risk
- Oval Brand fire extinguishers are more likely to stay mounted to the wall or column when bumped

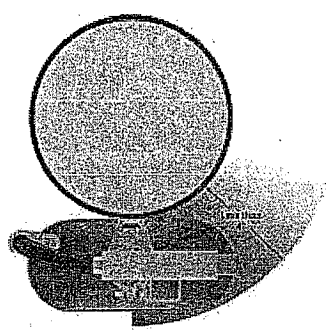
You're Now in Compliance

- The Oval Brand fire extinguisher complies with ADA, AODA, ANSI 117.1 and ISO 21542 protruding object limits when installed in accordance with NFPA 10
- Never protrudes more than 4" even when measured diagonally on a round building column
- Complies with all state and local building codes



Model 10JABC shown installed in a fire-rated cabinet in a 3-5/8" studded wall





Model 10HABC shown mounted to an 8" round column

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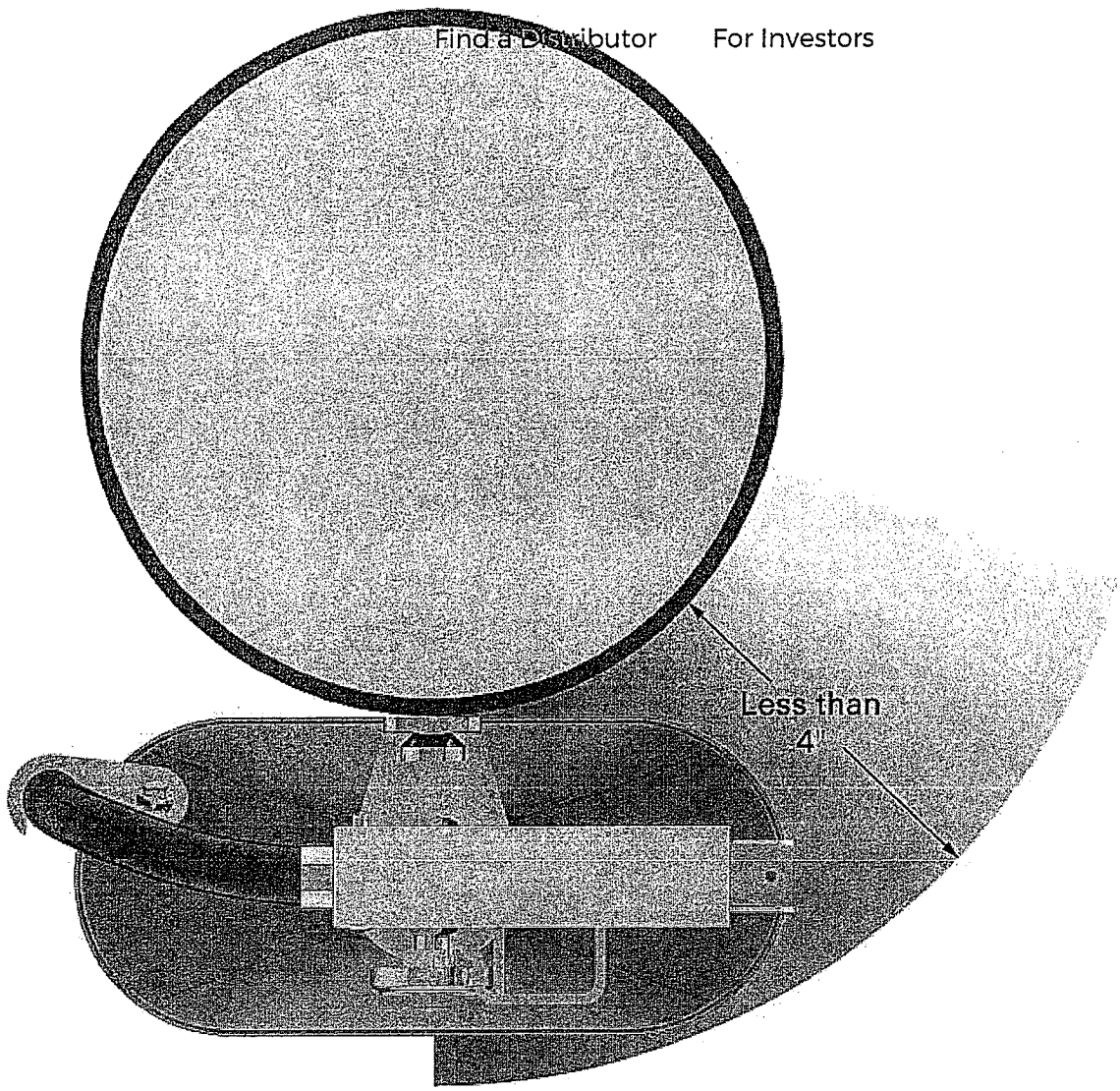

Less than
4"

Americans With Disabilities Act (ADA) Guidelines For Fire Extinguishers & Cabinets

The following guidelines should be used when fire extinguishers and/or fire extinguisher cabinets are located in public accommodations and commercial facilities subject to Title III of the Americans with Disabilities Act (ADA):

Wall Projections (Protrusions)

ADA Accessibility Guidelines (ADAAG) specify that objects projecting from walls with their leading edges between 27″ and 80″ above the finished floor shall protrude no more than 4″ into walks, corridors, passageways, or aisles. Objects mounted with their leading edges at or below 27″ may protrude any amount.

...cify *reach ranges* for building occupants who require access to equipment such as fire extinguishers and other fire safety devices.

For an unobstructed approach, the maximum forward reach to this equipment (for example, the fire extinguisher handle) is 48 inches above the floor. The maximum side reach for such an approach is also 48 inches (as of year 2012). The actual mounting heights for cabinets housing this equipment can be determined by reviewing the exact dimensions of the specified cabinet and the positioning of the fire equipment within that cabinet. Please note that these ADAAG reach range requirements fall with the NFPA (National Fire Protection Association) guidelines. The NFPA guidelines state that the distance from the floor to the top of the fire extinguisher to be no more than 5 feet, however the federal ADA guidelines should be followed as well.

For more information please visit the Accessibility Guidelines for Buildings and Facilities website or call the United States Access Board at 1-800-872-2253.

The year 2010 revision to the ADA standards can be found at http://www.ada.gov/regs2010/2010ADAStandards/2010ADAStandards.pdf

The 2010 standards went into effect in the year 2012.

State & Local Requirements

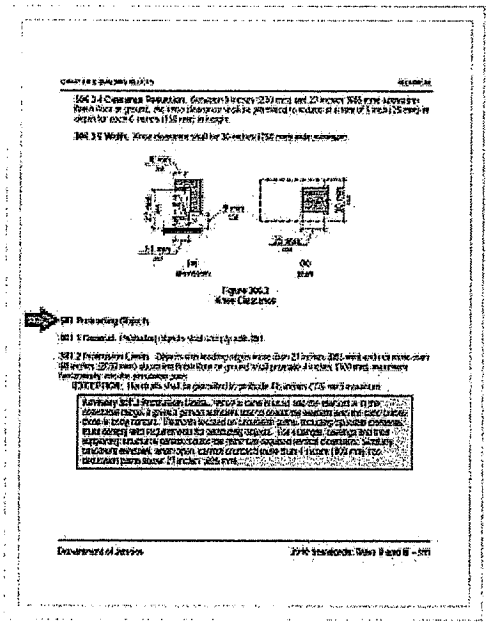
Many states, counties and municipalities reference ICC / ANSI A117.1 in their building codes. The 2009 edition of ANSI A117.1 can be found at https://law.resource.org/pub/us/code/ibr/ansi.a117.1.2009.pdf.

Many states, counties and municipalities reference the IFC® INTERNATIONAL FIRE CODE® in their building codes. The 2009 edition of the IFC® INTERNATIONAL FIRE CODE® can be found at https://law.resource.org/pub/us/code/ibr/icc.ifc.2009.html

CRPD & ISO 21542

Please note that should the United States Senate ratify the Convention on the Rights of Persons with Disabilities (CRPD), the ADA standards may eventually become harmonized with the international accessibility standard, ISO 21542. The new international accessibility guidelines,

different than the ADA guidelines in regards to fire extinguishers. The ISO extinguisher handle is 3.3" (100mm), and any objects with a leading edge higher than 11.8" (300mm) cannot project more than 4" (100mm). The OVAL fire extinguisher is well suited to comply with the ISO 21542 guidelines for height and depth of protrusion.



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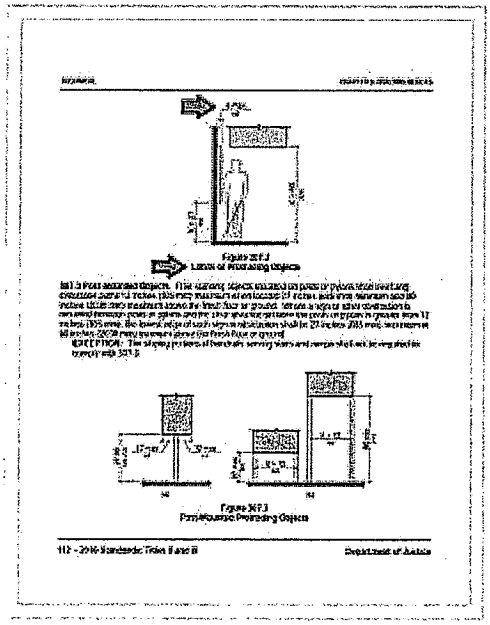

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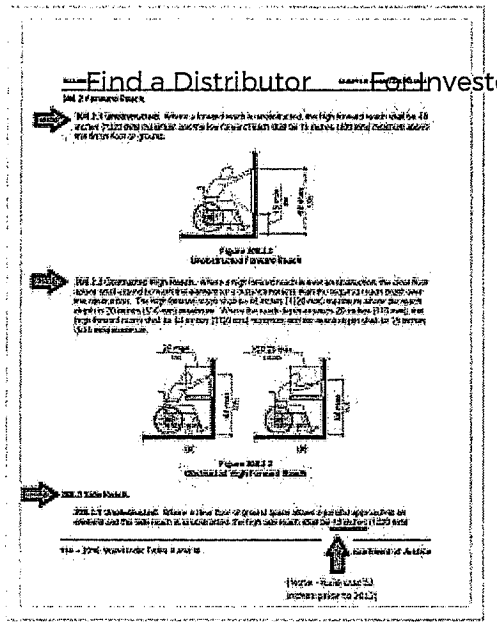

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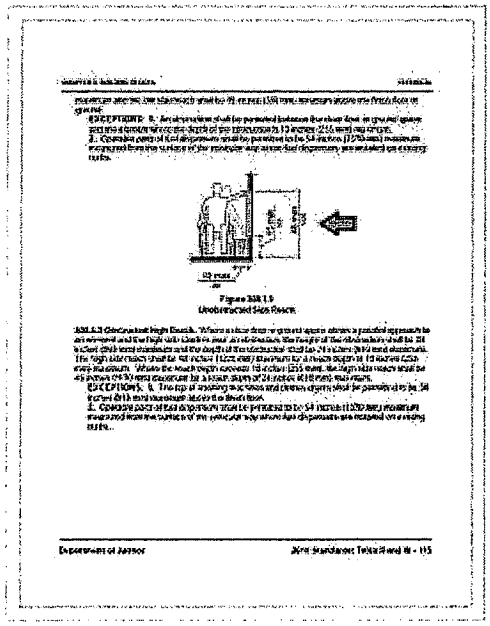

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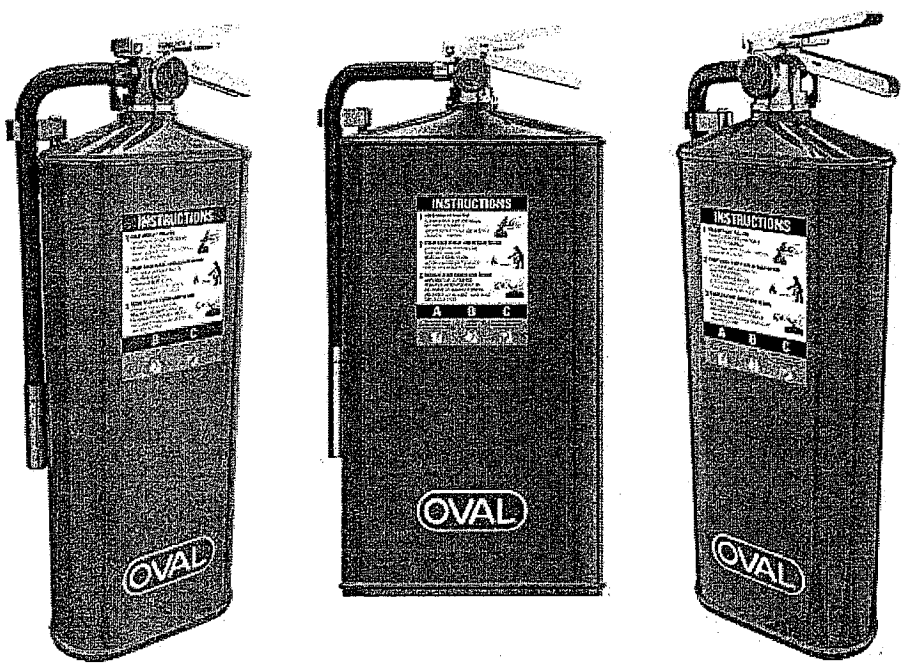
OVAL BEAUTY. BRAINS. BRAWN.

The Oval Brand fire extinguisher is much more than a pretty face.



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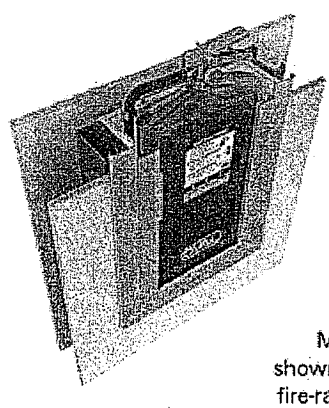
- Never again build out a wall to 6" or 8" simply to accommodate a fire extinguisher
- Fully-recessed cabinets can be installed in a 2-1/2" studded partition or a 6" masonry wall, saving construction costs & valuable real estate
- Slender profile allows for design flexibility and better aesthetics along hallways and corridors
- Oval Brand fire extinguishers look great and complement any décor



Model 10JABC
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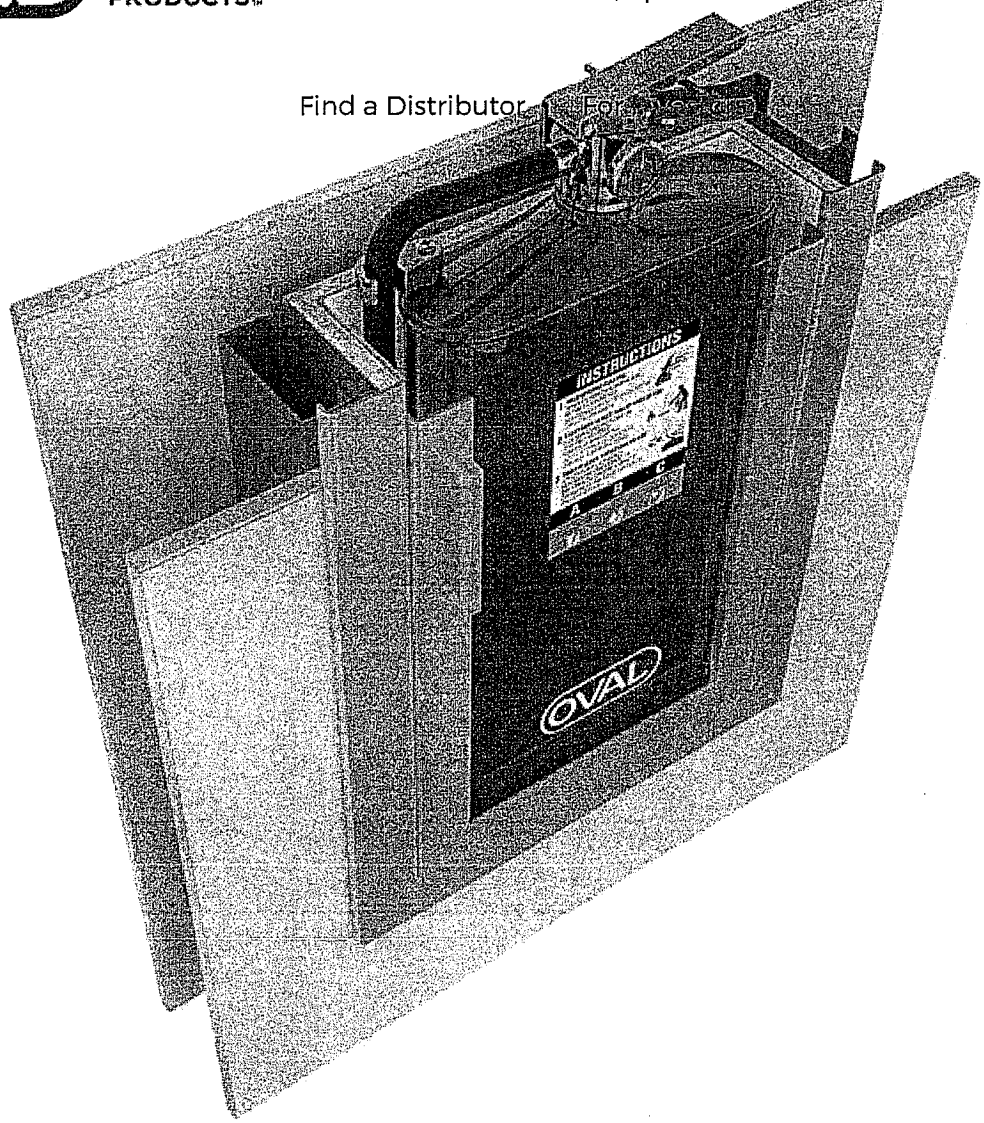

Additional Links Regarding Fire Extinguisher Code Compliance and ADA Accessibility

- New Hampshire State Fire Marshal confirms that the ADA & ANSI / ICC A117.1 height limit for fire extinguishers is 48 inches
- Oregon Structural Specialty Code states any wall or post mounted projection greater than 4 inches shall extend to the floor (Comment – Only Oval Brand Easily Complies)
- Protruding Objects within the Ohio Means of Egress Code

- Oregon states that the max height for fire extinguishers is 48 inches
- California states that the maximum height for fire extinguishers is 48 inches
- Merced County, California, agrees that the height limit for fire extinguishers is 48 inches
- US Department of Justice (DOJ) letter which confirms the height and protrusion limits for fire extinguishers and cabinets

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Oval Brand Fire Products mission is to revolutionize expectations for fire safety products by improving accessibility, functionality, and design.

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AMERICANS WITH DISABILITIES ACT (ADA) GUIDELINES FOR FIRE EXTINGUISHER CABINETS AND FIRE HOSE/VALVE CABINETS

The following guidelines should be used when fire extinguisher cabinets, fire hose/valve cabinets, and other fire protection cabinets are located in public accommodations and commercial facilities subject to Title III of the Americans with Disabilities Act (ADA):

WALL PROJECTIONS
ADA Accessibility Guidelines (ADAAG) specify that objects projecting from walls with their leading edges between 27" and 80" above the finished floor shall protrude no more than 4" into walks, corridors, passageways, or aisles. Objects mounted with their leading edges at or below 27" may protrude any amount.

Most ***semi-recessed*** fire protection cabinets have 2-1/2" return trims which comply with ADAAG. However, certain limited wall depths may require the specifier to consider return trims which project 4". If this occurs in a location subject to ADAAG and the cabinet must be mounted with its leading edge more than 27" above the finished floor, the 4" projecting trim must be specified with Larsen's recessed handle (see the **"Exclusive Options for Extinguisher Cabinets"** snapshot). Semi-recessed cabinets with 4-1/2" return trims do not comply with ADAAG, unless they can be mounted with their leading edges at or below 27" above the finished floor.

Larsen's ***surface-mounted*** cabinets project more than 4" from the wall. To comply with ADAAG, these units must be mounted with their leading edges at or below 27" from the finished floor. If this is not possible, these units may have to be changed to recessed or semi-recessed cabinets which do comply with ADAAG or relocated in areas not subject to ADAAG.

Larsen's recessed and trimless ***"bubble" cabinets (Cameo and Vista Series)*** project no more that 4" from the finished wall and comply with ADAAG. Larsen's semi-recessed and surface-mounted Cameo and Vista cabinets' project more than 4" from the wall, and compliance with ADAAG depends on location and installation issues discussed in the above paragraph. Please refer to the "Fire Extinguisher Cabinets; **Cameo Series** and **Vista Series**" profiles to identify these specific Cameo and Vista Series cabinets.

MOUNTING HEIGHTS
ADA Guidelines specify ***reach ranges*** for building occupants who require access to equipment such as fire extinguishers and other fire safety devices.

For an unobstructed approach, the maximum forward reach to this equipment (for example, the fire extinguisher handle) is 48" above the floor. The maximum side reach for such an approach is 54". The actual mounting heights for cabinets housing this equipment can be determined by reviewing the exact dimensions of the specified cabinet and the positioning of the fire equipment within that cabinet. Please note that these ADAAG reach range requirements fall with the NFPA (National Fire Protection Association) guidelines. The NFPA guidelines state that the distance from the floor to the top of the fire extinguisher to be no more than 5 feet.

SIGNAGE AND OPERATING MECHANISMS
At the present time, raised and brailled characters or other special ADA signage are not required for fire protection cabinets. In addition, the controls, handles, and other operating mechanisms for fire protection cabinet doors presently are not covered by ADA Accessibility Guidelines for hardware.

Please note that many ADA Guidelines for fire protection cabinets are not clearly defined and may be subject to change through the court system or other mediation methods. It is important to contact Larsen's for the most current information.

Home Page | Fire Extinguishers & Cabinets | Fire Ext. & Cabinets Submittal & Detail Sheets | Access Panels | Access Panels Submittal & Detail Sheets | Detention Equipment | Marine, Industrial Fire Equipment | Aluminum Replacement Doors & Frames | Website Map

Contact Larsen's Mfg. - Request More Info

If you would like us to contact you or provide more information please use the online form below. Please note we respect your privacy and will not distribute your information including email address to anyone else. Thank You!

Name:

E-mail:

Phone (required):

More information about: Please select one

How did you find us? Please select one

Additional comments or specific questions:

Request Info from Larsen's Manufacturing

Minneapolis Division
7421 Commerce Lane N.E., Minneapolis, MN 55432
Phone: (763) 571-1181 Toll Free: 1-800-527-7367
Fax: (763) 571-6900

Florida Division
3130 N.W. 17th St., Ft. Lauderdale, FL 33311
Phone: (954) 486-3325 Toll Free: 1-800-262-3473
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Education & Reference Trivia Next

What is the ADA height requirements for wall mounted fire extinguishers?

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Answers

Relevance

Best Answer: A maximum height above the finished floor of 48 inches for a forward approach or 54 inches for a side approach. In addition, wall-mounted extinguishers cannot project more than 4 inches beyond the wall if the bottom is not in the cane-detectable area below 27 inches off the floor. Recessed cabinets may be required.

Source(s):
Standards §§ 4.1.3(13), 4.27.2, 4.27.3, 4.2.4, 4.2.5, 4.2.6
http://www.ada.gov/pcatoolkit/chap7shelterchk.htm
http://www.ada.gov/omahaneatti.htm
http

Extinguisher Man · 6 years ago

1 0 1 comment

Ads
Fire Extinguishers - Amazon.com
www.Amazon.com/tools
Save on cordless, gardening, saws, building tools, hand tools & more

Fire Extinguisher Cabinet Height

Source(s):
https://shrinks.im/a9UoW

llorens · 3 months ago

0 0 Comment

This Site Might Help You.

RE:
What is the ADA height requirements for wall mounted fire extinguishers?

Source(s):
ada height requirements wall mounted fire extinguishers: https://tr.im/OFJDt

? · 2 years ago

0 1 Comment

The height limit for installation, as determined by the National Fire Protection Association (NFPA), is 60 inches for fire extinguishers weighing less than 40 pounds. However, compliance with the Americans with Disabilities Act (ADA) also needs to be followed within the United States. The ADA height limit of the fire extinguisher, as measured at the handle, is 48 inches. Fire extinguisher installations are also limited to protruding no more than 4 inches into the adjacent path of travel. The ADA rule states that any object adjacent to a path of travel cannot project more than 4 inches if the object's bottom leading edge is higher than 27 inches. The 4 inch protrusion rule was designed to protect people with low-vision and those who are blind. The height limit rule of 48 inches is primarily related to ac-

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cess by people with wheelchairs, but it is also related to other disabilities as well. Prior to 2012, the height limit was 54 inches for side-reach by wheel chair accessible installations. Installations made prior to 2012 at the 54 inch height are not required to be changed.

Kevin Kozlowski · 3 years ago

0 0 Comment

ada height requirements wall mounted fire extinguishers

Melli · 1 year ago

0 0 Comment

For the best answers, search on this site https://shorturl.im/awkfg

Yes, you do in fact have to mount the fire extinguisher(s) on a boat. The number of extinguishers, their type and size varies with the length of the boat, so, the Coast Guard puts out a pamphlet explaining this regulation. The U.S. Power Squadron and most marine dealers have this information available.

Karen · 1 year ago

0 0 Comment

For a side reach, the height cannot exceed 54".

For a forward reach, the height cannot exceed 48".

SO I would just stick with the 48" max height rule.

Source(s):
My good friend Terry Flanagan who knows the CFR's (Codified Federal Regulations) like the back of his hand.

CFR 36. (Which is the ADA standard)

todvango · 6 years ago

0 0 Comment

What is the ADA height requirements for wall mounted fire extinguishers?

Add your answer

Maybe you would like to learn more about one of these?

STATE OF NEW HAMPSHIRE DEPARTMENT OF SAFETY
John J. Barthelmes, Commissioner

Division of Fire Safety
OFFICE OF THE STATE FIRE MARSHAL
J. William Degnan, State Fire Marshal

Office: NH Incident Management Center, 110 Smokey Bear Blvd., Concord, NH
Mailing Address: 33 Hazen Drive, Concord, NH 03305
PHONE 603-223-4289, FAX 603-223-4294 or 603-223-4295
TDD Access: Relay NH 1-800-735-2964 ARSON HOTLINE 1-800-400-3526

INFORMATIONAL BULLETIN

BULLETIN #	TITLE			DATE ISSUED
2013-10	Fire Extinguishers and the ADA			12/19/13
SUPERSEDES	RELEASED BY	APPROVED BY	SOURCE	SUPERSEDED BY
	JDW	JDW	NFPA 10, ICC A-117.1	

Ensuring accessibility by all the population through ADA compliance is an important part of the design and construction of new facilities in New Hampshire. The required fire extinguisher electronic monitoring technology for new construction when a fire alarm is required raised a question regarding how ADA and the fire code meet in regards to fire extinguishers.

The State Fire Code adopts NFPA 10 which requires that fire extinguishers be mounted so that the top of the extinguisher is no higher than 60" above finish floor and the bottom of the extinguisher no less than 4" above the floor. The 2003 ICC A117.1 does not specifically address fire extinguisher mounting heights, but does have specific requirements for reaching for an object from a wheelchair. I believe that these requirements would certainly apply to fire extinguishers as far as the applicable accessibility code is concerned. The maximum high reach allowed shall be 48 inches. The minimum reach is 15 inches. Clear floor space requirements specific to the type of approach to the extinguisher must also be accommodated.

People in wheel chairs should be able to reach a fire extinguisher if needed. The obstruction detection of the fire extinguisher electronic monitoring system will help maintain the accessibility required by ADA. The Extinguisher electronic monitoring is required when the building is new construction and is required to have a fire alarm which in new construction is designed to include the appropriate location for horns/strobes to meet the notification requirements of ADA when a fire emergency is detected in a facility.

Although my original intent for requiring this technology was purely for life safety and first aid fire fighting use by the occupants. I had not considered that population that needs accessibility to all life safety devices. The fire extinguishers have to be accessible and most important when one would be accessed it is ready for use. The NH requirement for electronically monitoring fire extinguishers ensures the population with disabilities will have an accessible and usable fire extinguisher if needed along with sending an alarm when it is removed from the location so someone else knows there is a fire problem.

DELAWARE MEDICAL ORDERS FOR SCOPE OF TREATMENT (DMOST)

- FIRST, follow the orders below. THEN contact physician or other health-care practitioner for further orders, if indicated.
- The DMOST form is voluntary and is to be used by a patient with serious illness or frailty whose health care practitioner would not be surprised if the patient died within next year.
- Any section not completed requires providing the patient with the full treatment described in that section.
- Always provide comfort measures, regardless of the level of treatment chosen.
- The Patient or the Authorized Representative has been given a plain-language explanation of the DMOST form.
- The DMOST form must accompany the patient at all times. It is valid in every health care setting in Delaware.

Print Patient's Name (last, first, middle) _____ Date of Birth ___/___/___ last four digits of SSN _____ Gender _____

Patient's Address _____ Phone Number _____

A **Goals of Care** (see reverse for instructions. This section does not constitute a medical order.)

B **Cardiopulmonary Resuscitation (CPR)** *Patient has no pulse and/or is not breathing*

☐ Attempt resuscitation/CPR. ☐ Do not attempt resuscitation/DNAR.

C **Medical Interventions:** *Patient is breathing and/or has a pulse.*

☐ **Full Treatment:** Use all appropriate medical and surgical interventions, including intubation and mechanical ventilation in an intensive care setting, if indicated to support life. Transfer to a hospital, if necessary.

☐ **Limited Treatment:** Use appropriate medical treatment, such as antibiotics and IV fluids, as indicated. May use oxygen and noninvasive positive airway pressure. Generally avoid intensive care.

☐ Transfer to hospital for medical interventions.

☐ Transfer to hospital only if comfort needs cannot be met in current setting.

☐ **Treatment of Symptoms Only/Comfort Measures:** Use any medications, including pain medication, by any route, positioning, wound care, and other measures to keep clean, warm, dry, and comfortable. Use oxygen, suctioning, and manual treatment of airway obstruction as needed for comfort. Use antibiotics only to promote comfort. Transfer only if comfort needs cannot be met in current location.

☐ **Other Orders:** _____

D **Artificially Administered Fluids and Nutrition:** *Always offer food/fluids by mouth if feasible and desired.*

☐ Long-term artificial nutrition

☐ Defined trial period of artificial nutrition: Length of trial: _____ Goal: _____

☐ No artificial nutrition ☐ hydration only ☐ none (check one box)

E **Orders Discussed With:** ☐ Patient _____ ph.# _____ Printed Name & phone number

☐ Guardian ☐ Surrogate (per DE Surrogacy Statute)

☐ Other ☐ Agent under healthcare POA/or AHCD _____ Signature

☐ Parent of a minor

_____

Print Name of Authorized Representative Relation to Patient Address Phone #

If I lose capacity, my Authorized Representative may / may not change or void this DMOST _____ Patient Signature

F

SIGNATURES: Patient/Authorized Representative/Parent (mandatory) *I have discussed this information with my Physician / APRN / PA*

_____ Signature Date

If authorized representative signs, the medical record must document that a physician has determined the patient's incapacity & the authorized representative's authority, in accordance with DE law.

Physician / APRN / PA

_____ Signature Date Time

_____ Print Name

_____ Print Address

_____ License Number Phone #

DIRECTIONS FOR HEALTH-CARE PROFESSIONALS

COMPLETING A DMOST FORM

- Must be signed by a Licensed Physician, Advance Practice Registered Nurse, or Physician's Assistant.
- Use of original form is highly encouraged. Photocopies and faxes of signed DMOST forms are legal and valid.
- Any incomplete section of a DMOST form indicates the patient should get the full treatment described in that section.

REVIEWING A DMOST FORM -- It is recommended that a DMOST form be reviewed periodically, especially when:

- The patient is transferred from one care setting or care level to another,
- There is a substantial change in the patient's health status, or
- The patient's treatment preferences change.

MODIFYING AND VOIDING INFORMATION ON A COMPLETED DMOST FORM

A patient with decision-making capacity can void a DMOST form at any time in any manner that indicates an intent to void.

Any modification to the form voids the DMOST form. A new DMOST form may be completed with a health care practitioner. Forms are available online at www.delaware.gov/.

SECTION A This section outlines the specific goals that the patient is trying to achieve by this treatment plan. Health care professionals shall share information regarding prognosis with the patient in order to assist the patient in setting achievable goals. Examples may include:

- Longevity, cure, remission or better quality of life
- To live long enough to attend an important event (wedding, birthday, graduation)
- To live without pain, nausea, shortness of breath or other symptoms
- Eating, driving, gardening, enjoying time with family, or other activities

SECTION B This is a medical order. Mark a selection for the patient's preferences regarding CPR.

SECTION C This is a medical order. When "limited treatment" is selected, also indicate whether the patient prefers or does not prefer transfer to a hospital for additional care.

- IV medication to enhance comfort may be appropriate treatment for a patient who has indicated "symptom treatment only."
- Non-invasive positive airway pressure includes continuous positive airway pressure (CPAP) and bi-level positive airway pressure (Bi-PAP).
- The patient will always be provided with comfort measures.
- Patients who are already receiving long-term mechanical ventilation may indicate treatment limitations on the "Other Orders" line.

SECTION D This is medical order. Mark a selection for the patient's preferences regarding nutrition and hydration. Check one box.

- Oral fluids and nutrition should always be offered if feasible and consistent with the goals of care.

SECTION E This section documents with whom the medical orders were discussed, the name of any healthcare professional who assisted in the completion of the Form, the name of any authorized representative and if the authorized representative may not modify/void the Form.

SECTION F To be valid, all information in this section must be completed.

HIPAA PERMITS DISCLOSURE OF DMOST FORMS TO OTHER HEALTH CARE PROFESSIONALS AS NECESSARY FOR TREATMENT.

SEND FORM WITH PATIENT WHENEVER MOVED TO A NEW SETTING

Faxed, Copied, or Electronic Versions of the Form are legal and valid.

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

January 25, 2013

Dear Colleague:

Extracurricular athletics—which include club, intramural, or interscholastic (*e.g.*, freshman, junior varsity, varsity) athletics at all education levels—are an important component of an overall education program. The United States Government Accountability Office (GAO) published a report that underscored that access to, and participation in, extracurricular athletic opportunities provide important health and social benefits to all students, particularly those with disabilities.[1] These benefits can include socialization, improved teamwork and leadership skills, and fitness. Unfortunately, the GAO found that students with disabilities are not being afforded an equal opportunity to participate in extracurricular athletics in public elementary and secondary schools.[2]

To ensure that students with disabilities consistently have opportunities to participate in extracurricular athletics equal to those of other students, the GAO recommended that the United States Department of Education (Department) clarify and communicate schools' responsibilities under Section 504 of the Rehabilitation Act of 1973 (Section 504) regarding the provision of extracurricular athletics. The Department's Office for Civil Rights (OCR) is responsible for enforcing Section 504, which is a Federal law

[1] United States Government Accountability Office, *Students with Disabilities: More Information and Guidance Could Improve Opportunities in Physical Education and Athletics*, No. GAO-10-519, at 1, 31 (June 2010), *available at* http://www.gao.gov/assets/310/305770.pdf.

[2] *Id.* at 20-22, 25-26.

designed to protect the rights of individuals with disabilities in programs and activities (including traditional public schools and charter schools) that receive Federal financial assistance.[3]

In response to the GAO's recommendation, this guidance provides an overview of the obligations of public elementary and secondary schools under Section 504 and the Department's Section 504 regulations, cautions against making decisions based on presumptions and stereotypes, details the specific Section 504 regulations that require students with disabilities to have an equal opportunity for participation in nonacademic and extracurricular services and activities, and discusses the provision of separate or different athletic opportunities. The specific details of the illustrative examples offered in this guidance are focused on the elementary and secondary school context. Nonetheless, students with disabilities at the postsecondary level must also be provided an equal opportunity to participate in athletics, including intercollegiate, club, and intramural athletics.[4]

[3] 29 U.S.C. § 794(a), (b). Pursuant to a delegation by the Attorney General of the United States, OCR shares in the enforcement of Title II of the Americans with Disabilities Act of 1990, which is a Federal law prohibiting disability discrimination in the services, programs, and activities of state and local governments (including public school districts), regardless of whether they receive Federal financial assistance. 42 U.S.C. § 12132. Violations of Section 504 that result from school districts' failure to meet the obligations identified in this letter also constitute violations of Title II. 42 U.S.C. § 12201(a). To the extent that Title II provides greater protection than Section 504, covered entities must comply with Title II's substantive requirements.

OCR also enforces Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs that receive Federal financial assistance. 20 U.S.C. § 1681. For more information about the application of Title IX in athletics, see OCR's "Reading Room," "Documents – Title IX," at http://www.ed.gov/ocr/publications.html#TitleIX-Docs.

[4] 34 C.F.R. §§ 104.4, 104.47. The U.S. Department of Education has determined that this document is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007). OCR issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights under the civil rights laws and implementing regulations that we enforce. OCR's legal authority is based on those laws and regulations. This letter does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to us at the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202.

I. *Overview of Section 504 Requirements*

To better understand the obligations of school districts with respect to extracurricular athletics for students with disabilities, it is helpful to review Section 504's requirements.

Under the Department's Section 504 regulations, a school district is required to provide a qualified student with a disability an opportunity to benefit from the school district's program equal to that of students without disabilities. For purposes of Section 504, a person with a disability is one who (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.[5] With respect to public elementary and secondary educational services, "qualified" means a person (i) of an age during which persons without disabilities are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to persons with disabilities, or (iii) to whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act (IDEA).[6]

Of course, simply because a student is a "qualified" student with a disability does not mean that the student must be allowed to participate in any selective or competitive program offered by a school district; school districts may require a level of skill or ability of a student in order for that student to participate in a selective or competitive program or activity, so long as the selection or competition criteria are not discriminatory.

Among other things, the Department's Section 504 regulations prohibit school districts from:

- denying a qualified student with a disability the opportunity to participate in or benefit from an aid, benefit, or service;
- affording a qualified student with a disability an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others;

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[5] 29 U.S.C. § 705(9)(B), (20)(B) (as amended by the Americans with Disabilities Act Amendments Act of 2008); 34 C.F.R. § 104.3(j). For additional information on the broadened meaning of disability after the effective date of the 2008 Amendments Act, see OCR's 2012 Dear Colleague Letter and Frequently Asked Questions document, available at http://www.ed.gov/ocr/letters/colleague-201109.html, and http://www.ed.gov/ocr/docs/dcl-504faq-201109.html.

[6] 34 C.F.R. § 104.3(*l*)(2).

- providing a qualified student with a disability with an aid, benefit, or service that is not as effective as that provided to others and does not afford that student with an equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement in the most integrated setting appropriate to the student's needs;

- providing different or separate aid, benefits, or services to students with disabilities or to any class of students with disabilities unless such action is necessary to provide a qualified student with a disability with aid, benefits, or services that are as effective as those provided to others; and

- otherwise limiting a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.[7]

The Department's Section 504 regulations also require school districts to provide a free appropriate public education (Section 504 FAPE) to each qualified person with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the person's disability.[8]

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[7] 34 C.F.R. § 104.4(b)(1)(i)-(iv), (vii), (2), (3). Among the many specific applications of these general requirements, Section 504 prohibits harassment on the basis of disability, including harassment that occurs during extracurricular athletic activities. OCR issued a Dear Colleague letter dated October 26, 2010, that addresses harassment, including disability harassment, in educational settings. *See* Dear Colleague Letter: Harassment and Bullying, available at http://www.ed.gov/ocr/letters/colleague-201010.html. For additional information on disability-based harassment, see OCR's Dear Colleague Letter: Prohibited Disability Harassment (July 25, 2000), available at http://www.ed.gov/ocr/docs/disabharassltr.html.

[8] 34 C.F.R. § 104.33(a). Section 504 FAPE may include services a student requires in order to ensure that he or she has an equal opportunity to participate in extracurricular and other nonacademic activities. One way to meet the Section 504 FAPE obligation is to implement an individualized education program (IEP) developed in accordance with the IDEA. 34 C.F.R. § 104.33(b)(2). Because the IDEA is not enforced by OCR, this document is not intended as an explanation of IDEA requirements or implementing regulations, which include the requirement that a student's IEP address the special education, related services, supplementary aids and services, program modifications, and supports for school personnel to be provided to enable the student to, among other things, participate in extracurricular and other nonacademic activities. 34 C.F.R. § 300.320(a)(4)(ii). In general, OCR would view a school district's failure to address participation or requests for participation in extracurricular athletics for a qualified student with a disability with an IEP in a manner consistent with IDEA requirements as a failure to ensure Section 504 FAPE and an equal opportunity for participation.

A school district must also adopt grievance procedures that incorporate appropriate due process standards and that provide for prompt and equitable resolution of complaints alleging violations of the Section 504 regulations.[9]

A school district's legal obligation to comply with Section 504 and the Department's regulations supersedes any rule of any association, organization, club, or league that would render a student ineligible to participate, or limit the eligibility of a student to participate, in any aid, benefit, or service on the basis of disability.[10] Indeed, it would violate a school district's obligations under Section 504 to provide significant assistance to any association, organization, club, league, or other third party that discriminates on the basis of disability in providing any aid, benefit, or service to the school district's students.[11] To avoid violating their Section 504 obligations in the context of extracurricular athletics, school districts should work with their athletic associations to ensure that students with disabilities are not denied an equal opportunity to participate in interscholastic athletics.[12]

II. *Do Not Act On Generalizations and Stereotypes*

A school district may not operate its program or activity on the basis of generalizations, assumptions, prejudices, or stereotypes about disability generally, or specific disabilities in particular. A school district also may not rely on generalizations about what students with a type of disability are capable of—one student with a certain type of disability may not be able to play a certain type of sport, but another student with the same disability may be able to play that sport.

Example 1: A student has a learning disability and is a person with a disability as defined by Section 504. While in middle school, this student enjoyed participating in her school's lacrosse club. As she enters the ninth grade in high school, she tries out and is

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[9] 34 C.F.R. § 104.7(b).

[10] 34 C.F.R. § 104.10(a), 34 C.F.R. § 104.4(b)(1).

[11] 34 C.F.R. § 104.4(b)(1)(v); 34 C.F.R. pt. 104, App. A § 104.4 at 367 (2012).

[12] OCR would find that an interscholastic athletic association is subject to Section 504 if it receives Federal financial assistance or its members are recipients of Federal financial assistance who have ceded to the association controlling authority over portions of their athletic program. *Cf. Cmtys. for Equity v. Mich. High Sch. Athletic Ass'n, Inc.*, 80 F.Supp.2d 729, 733-35 (W.D. Mich. 2000) (at urging of the United States, court finding that an entity with controlling authority over a program or activity receiving Federal financial assistance is subject to Title IX's anti-discrimination rule). Where an athletic association is covered by Section 504, OCR would find that the school district's obligations set out in this letter would apply with equal force to the covered athletic association.

selected as a member of the high school's lacrosse team. The coach is aware of this student's learning disability and believes that all students with the student's particular learning disability would be unable to play successfully under the time constraints and pressures of an actual game. Based on this assumption, the coach decides never to play this student during games. In his opinion, participating fully in all the team practice sessions is good enough.

> *Analysis*: OCR would find that the coach's decision violates Section 504. The coach denied this student an equal opportunity to participate on the team by relying solely on characteristics he believed to be associated with her disability. A school district, including its athletic staff, must not operate on generalizations or assumptions about disability or how a particular disability limits any particular student. Rather, the coach should have permitted this student an equal opportunity to participate in this athletic activity, which includes the opportunity to participate in the games as well as the practices. The student, of course, does not have a right to participate in the games; but the coach's decision on whether the student gets to participate in games must be based on the same criteria the coach uses for all other players (such as performance reflected during practice sessions).

III. *Ensure Equal Opportunity for Participation*

A school district that offers extracurricular athletics must do so in such manner as is necessary to afford qualified students with disabilities an equal opportunity for participation.[13] This means making reasonable modifications and providing those aids and services that are necessary to ensure an equal opportunity to participate, unless the school district can show that doing so would be a fundamental alteration to its program.[14] Of course, a school district may adopt bona fide safety standards needed to implement its extracurricular athletic program or activity. A school district, however, must consider whether safe participation by any particular student with a disability can be assured through reasonable modifications or the provision of aids and services.[15]

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[13] 34 C.F.R. § 104.37(a), (c).

[14] *See Alexander v. Choate*, 469 U.S. 287, 300-01 (1985) (Section 504 may require reasonable modifications to a program or benefit to assure meaningful access to qualified persons with disabilities); *Southeastern Cmty. Coll. v. Davis*, 442 U.S. 397 (1979) (Section 504 does not prohibit a college from excluding a person with a serious hearing impairment as not qualified where accommodating the impairment would require a fundamental alteration in the college's program).

[15] 34 C.F.R. § 104.4(b)(1).

Schools may require a level of skill or ability for participation in a competitive program or activity; equal opportunity does not mean, for example, that every student with a disability is guaranteed a spot on an athletic team for which other students must try out. A school district must, however, afford qualified students with disabilities an equal opportunity for participation in extracurricular athletics in an integrated manner to the maximum extent appropriate to the needs of the student.[16] This means that a school district must make reasonable modifications to its policies, practices, or procedures whenever such modifications are necessary to ensure equal opportunity, unless the school district can demonstrate that the requested modification would constitute a fundamental alteration of the nature of the extracurricular athletic activity.

In considering whether a reasonable modification is legally required, the school district must first engage in an individualized inquiry to determine whether the modification is necessary. If the modification is necessary, the school district must allow it unless doing so would result in a fundamental alteration of the nature of the extracurricular athletic activity. A modification might constitute a fundamental alteration if it alters such an essential aspect of the activity or game that it would be unacceptable even if it affected all competitors equally (such as adding an extra base in baseball). Alternatively, a change that has only a peripheral impact on the activity or game itself might nevertheless give a particular player with a disability an unfair advantage over others and, for that reason, fundamentally alter the character of the competition. Even if a specific modification would constitute a fundamental alteration, the school district would still be required to determine if other modifications might be available that would permit the student's participation.

[16] 34 C.F.R. § 104.37(a), (c); 34 C.F.R. § 104.34(b); 34 C.F.R. § 104.4(b)(1)(ii).

To comply with its obligations under Section 504, a school district must also provide a qualified student with a disability with needed aids and services, if the failure to do so would deny that student an equal opportunity for participation in extracurricular activities in an integrated manner to the maximum extent appropriate to the needs of the student.[17]

Example 2: A high school student has a disability as defined by Section 504 due to a hearing impairment. The student is interested in running track for the school team. He is especially interested in the sprinting events such as the 100 and 200 meter dashes. At the tryouts for the track team, the start of each race was signaled by the coach's assistant using a visual cue, and the student's speed was fast enough to qualify him for the team in those events. After the student makes the team, the coach also signals the start of races during practice with the same visual cue. Before the first scheduled meet, the student asks the district that a visual cue be used at the meet simultaneously when the starter pistol sounds to alert him to the start of the race. Two neighboring districts use a visual cue as an alternative start in their track and field meets. Those districts report that their runners easily adjusted to the visual cue and did not complain about being distracted by the use of the visual cue.

After conducting an individualized inquiry and determining that the modification is necessary for the student to compete at meets, the district nevertheless refuses the student's request because the district is concerned that the use of a visual cue may distract other runners and trigger complaints once the track season begins. The coach tells the student that although he may practice with the team, he will not be allowed to participate in meets.

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[17] 34 C.F.R. § 104.37(a), (c); 34 C.F.R. § 104.34(b); 34 C.F.R. § 104.4(b)(1)(ii). Although a school district may also raise the defense that a needed modification or aid or service would constitute an undue burden to its program, based on OCR's experience, such a defense would rarely, if ever, prevail in the context of extracurricular athletics; for this reason, to the extent the examples in this letter touch on applicable defenses, the discussion focuses on the fundamental alteration defense. To be clear, however, neither the fundamental alteration nor undue burden defense is available in the context of a school district's obligation to provide a FAPE under the IDEA or Section 504. *See* 20 U.S.C. § 1414(d)(1); 34 C.F.R. § 104.33. Moreover, whenever the IDEA would impose a duty to provide aids and services needed for participation in extracurricular athletics (as discussed in footnote 8 above), OCR would likewise rarely, if ever, find that providing the same needed aids and services for extracurricular athletics constitutes a fundamental alteration under Section 504 for students not eligible under the IDEA.

Analysis: OCR would find that the school district's decision violates Section 504.

While a school district is entitled to set its requirements as to skill, ability, and other benchmarks, it must provide a reasonable modification if necessary, unless doing so would fundamentally alter the nature of the activity. Here, the student met the benchmark requirements as to speed and skill in the 100 and 200 meter dashes to make the team. Once the school district determined that the requested modification was necessary, the school district was then obligated to provide the visual cue unless it determined that providing it would constitute a fundamental alteration of the activity.

In this example, OCR would find that the evidence demonstrated that the use of a visual cue does not alter an essential aspect of the activity or give this student an unfair advantage over others. The school district should have permitted the use of a visual cue and allowed the student to compete.

Example 3: A high school student was born with only one hand and is a student with a disability as defined by Section 504. This student would like to participate on the school's swim team. The requirements for joining the swim team include having a certain level of swimming ability and being able to compete at meets. The student has the required swimming ability and wishes to compete. She asks the school district to waive the "two-hand touch" finish it requires of all swimmers in swim meets, and to permit her to finish with a "one-hand touch." The school district refuses the request because it determines that permitting the student to finish with a "one-hand touch" would give the student an unfair advantage over the other swimmers.

Analysis: A school district must conduct an individualized assessment to determine whether the requested modification is necessary for the student's participation, and must determine whether permitting it would fundamentally alter the nature of the activity. Here, modification of the two-hand touch is necessary for the student to participate. In determining whether making the necessary modification – eliminating the two-hand touch rule – would fundamentally alter the nature of the swim competition, the school district must evaluate whether the requested modification alters an essential aspect of the activity or would give this student an unfair advantage over other swimmers.

OCR would find a one-hand touch does not alter an essential aspect of the activity. If, however, the evidence demonstrated that the school district's judgment was correct that she would gain an unfair advantage over others who are judged on the touching of both hands, then a complete waiver of the rule would constitute a fundamental alteration and not be required.

In such circumstances, the school district would still be required to determine if other modifications were available that would permit her participation. In this situation, for example, the school district might determine that it would not constitute an unfair advantage over other swimmers to judge the student to have finished when she touched the wall with one hand and her other arm was simultaneously stretched forward. If so, the school district should have permitted this modification of this rule and allowed the student to compete.

Example 4: An elementary school student with diabetes is determined not eligible for services under the IDEA. Under the school district's Section 504 procedures, however, he is determined to have a disability. In order to participate in the regular classroom setting, the student is provided services under Section 504 that include assistance with glucose testing and insulin administration from trained school personnel. Later in the year, this student wants to join the school-sponsored gymnastics club that meets after school. The only eligibility requirement is that all gymnastics club members must attend that school. When the parent asks the school to provide the glucose testing and insulin administration that the student needs to participate in the gymnastics club, school personnel agree that it is necessary but respond that they are not required to provide him with such assistance because gymnastics club is an extracurricular activity.

Analysis: OCR would find that the school's decision violates Section 504. The student needs assistance in glucose testing and insulin administration in order to participate in activities during and after school. To meet the requirements of Section 504 FAPE, the school district must provide this needed assistance during the school day.

In addition, the school district must provide this assistance after school under Section 504 so that the student can participate in the gymnastics club, unless doing so would be a fundamental alteration of the district's education program. Because the school district always has a legal obligation under IDEA to provide aids or services in its education program to enable any IDEA-eligible students to participate in extracurricular

activities,[18] providing these aids or services after school to a student with a disability not eligible under the IDEA would rarely, if ever, be a fundamental alteration of its education program. This remains true even if there are currently no IDEA-eligible students in the district who need these aids or services.

In this example, OCR would find that the school district must provide glucose testing and insulin administration for this student during the gymnastics club in order to comply with its Section 504 obligations. The student needs this assistance in order to participate in the gymnastics club, and because this assistance is available under the IDEA for extracurricular activities, providing this assistance to this student would not constitute a fundamental alteration of the district's education program.[19]

IV. *Offering Separate or Different Athletic Opportunities*

As stated above, in providing or arranging for the provision of extracurricular athletics, a school district must ensure that a student with a disability participates with students without disabilities to the maximum extent appropriate to the needs of that student with a disability.[20] The provision of *unnecessarily* separate or different services is discriminatory.[21] OCR thus encourages school districts to work with their community and athletic associations to develop broad opportunities to include students with disabilities in all extracurricular athletic activities.

Students with disabilities who cannot participate in the school district's existing extracurricular athletics program – even with reasonable modifications or aids and services – should *still* have an equal opportunity to receive the benefits of extracurricular athletics. When the interests and abilities of some students with disabilities cannot be as fully and effectively met by the school district's existing extracurricular athletic program, the school district should create additional opportunities for those students with disabilities.

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[18] 20 U.S.C. §§ 1412(a)(1), 1414(d)(1)(A)(i)(IV)(bb); 34 CFR §§ 300.320(a)(4)(ii), 300.107, 300.117; *see also* footnotes 8 & 17, above.

[19] 34 C.F.R. § 104.37.

[20] 34 C.F.R. § 104.34(b).

[21] 34 C.F.R. pt. 104, App. A § 104.4 at 367 (2012); 34 C.F.R. pt. 104, App. A § 104.37 at 376 (2012).

In those circumstances, a school district should offer students with disabilities opportunities for athletic activities that are separate or different from those offered to students without disabilities. These athletic opportunities provided by school districts should be supported equally, as with a school district's other athletic activities. School districts must be flexible as they develop programs that consider the unmet interests of students with disabilities. For example, an ever-increasing number of school districts across the country are creating disability-specific teams for sports such as wheelchair tennis or wheelchair basketball. When the number of students with disabilities at an individual school is insufficient to field a team, school districts can also: (1) develop district-wide or regional teams for students with disabilities as opposed to a school-based team in order to provide competitive experiences; (2) mix male and female students with disabilities on teams together; or (3) offer "allied" or "unified" sports teams on which students with disabilities participate with students without disabilities.[22] OCR urges school districts, in coordination with students, families, community and advocacy organizations, athletic associations, and other interested parties, to support these and other creative ways to expand such opportunities for students with disabilities.[23]

V. *Conclusion*

OCR is committed to working with schools, students, families, community and advocacy organizations, athletic associations, and other interested parties to ensure that students with disabilities are provided an equal opportunity to participate in extracurricular athletics. Individuals who believe they have been subjected to discrimination may also file a complaint with OCR or in court.[24]

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[22] The Department's Office of Special Education and Rehabilitative Services issued a guidance document that, among other things, includes suggestions on ways to increase opportunities for children with disabilities to participate in physical education and athletic activities. That guidance, *Creating Equal Opportunities for Children and Youth with Disabilities to Participate in Physical Education and Extracurricular Athletics*, dated August 2011, is available at http://www2.ed.gov/policy/speced/guid/idea/equal-pe.pdf.

[23] It bears repeating, however, that a qualified student with a disability who would be able to participate in the school district's existing extracurricular athletics program, with or without reasonable modifications or the provision of aids and services that would not fundamentally alter the program, may neither be denied that opportunity nor be limited to opportunities to participate in athletic activities that are separate or different. 34 C.F.R. § 104.37(c)(2).

[24] 34 C.F.R. § 104.61 (incorporating 34 C.F.R. § 100.7(b)); *Barnes v. Gorman*, 536 U.S. 181, 185 (2002).

For the OCR regional office serving your area, please visit: http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm, or call OCR's Customer Service Team at 1-800-421-3481 (TDD 1-877-521-2172).

Please do not hesitate to contact us if we can provide assistance in your efforts to address this issue or if you have other civil rights concerns. I look forward to continuing our work together to ensure that students with disabilities receive an equal opportunity to participate in a school district's education program.

Sincerely,

/s/

Seth M. Galanter
Acting Assistant Secretary for Civil Rights

MIDDLETOWN
TRANSCRIPT

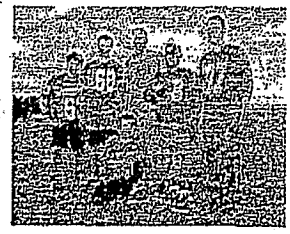
By Mike Santa Barbara

Print Page

November 11, 2015 2:39PM

Special Olympics Delaware and DIAA team up to bring unified sports state-wide

In January 2013, the United States Department of Education released a directive stating that athletics was a civil right for people with disabilities, while also offering guidelines to include those students in all sports.



PHOTO/ SUBMITTED PHOTO

Ian Snitch, Alex Roberts, Ryan Beckman, Davonte Bessix, and Dalion Johnson are pictured here together at a unified flag-football practice at Middletown High School.

Special Olympics Delaware and the DIAA (Delaware Interscholastic Athletic Association) have taken that mandate a step forward by creating unified sports teams which have players with and without disabilities. While the organizations hope the teams will one day reach throughout the state, Middletown High School is already participating.

The DIAA first introduced a unified sports program in high school track & field three year ago, and since then the number of participating schools has grown.

"Our track and field program has grown from five teams in year one to what we expect to be 16 or more this upcoming fourth season," said Gary Cimaglia, Senior Director of Sports for Special Olympics of Delaware. "Ultimately, we'd like to have DIAA sanctioned unified sports in each of the three typical high school seasons."

During the fall season, Special Olympics Delaware and the DIAA started a flag-football pilot program which featured Middletown and three other high schools: William Penn, Caesar Rodney, and Concord.

Games were played featuring unified teams which included those with disabilities and varsity players. Players were treated to all of the activities and fanfare that goes along with preparing for a big football game.

"Football is the most popular high school sport in general so it seemed only natural to try and make flag football, which is an official Special Olympics sport," Cimaglia said. "Our hope is that our unified sports flag football teams will eventually be treated at each school just like the existing freshman, junior varsity, and varsity teams. We want our teams to practice often and compete weekly, because it's only fair that they have the same opportunities to improve their game as the other student-athletes in their school do."

Sports have always been an outlet for student-athletes to show off their skills on their respective fields of play. Though being a part of team goes much deeper than what occurs during game day. Players on a team are connected by the schools and communities they represent, helping teach life-lessons as they work together fighting for a common goal. With the programs created by Special Olympics Delaware and the DIAA, student-athletes of all abilities will get the chance to reap those benefits.

The reach of these programs doesn't start and end with those finally getting their shot at taking the field alongside their fellow students. Current varsity players and coaches working side-by-side with those with disabilities can only help to educate and bring acceptance.

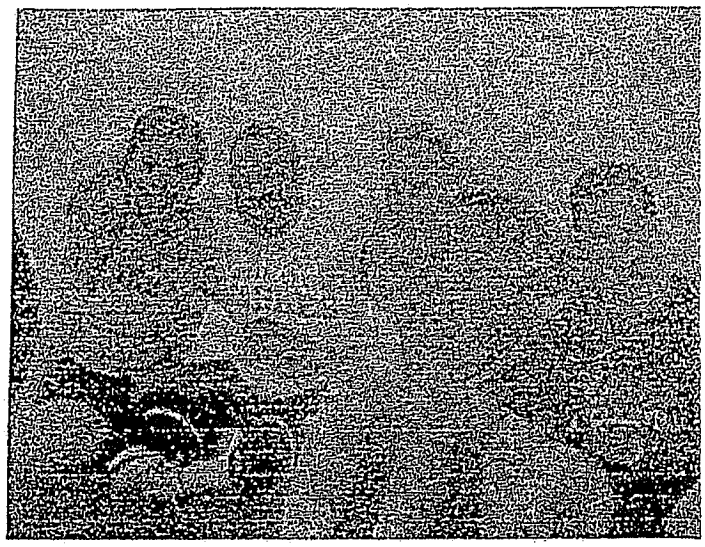
In the very near future we could see unified varsity sports in every sport up and down the state. And if the reaction from the most recent flag-football pilot is any indication, that future could come sooner rather than later.

"The positive response from the pilot event has been overwhelming," said Kylie Melvin, director of youth and school initiatives for Delaware Special Olympics. "From the players to the coaches, to the families and spectators, and even the outpouring of media interest, we are just thrilled with the outcome. As one of our longtime volunteer coaches said, 'there's no turning back now!'"

The four teams that met in the pilot program last month will come together once more before the football season ends, on Dec. 5 at Delaware Stadium during the DIAA Division I and Division II State Football Championship games.

Unified Sports

Unified Sports®



(http://www.specialolympics.org/unified_sports.aspx) is a registered program of Special Olympics that combines approximately equal numbers of athletes with and without intellectual disability on sports teams for training and competition.

All Unified Sports® players, both athletes and special partners, are of similar age and matched sport skill ability. Unified Sports® teams are placed in competitive divisions based on their skill abilities, and range from training divisions (with a skill-learning focus) to high level competition.

Team sports are about having fun, promoting physical health and bringing people together. Special Olympics Unified Sports® teams do all of that – and shatter stereotypes about intellectual disability in the process.

Unified Sports is a moving and exciting initiative for higher ability athletes of all ages, from youth to adults. Mixed teams provide the public direct opportunities to experience first-hand the capabilities and courage of Special Olympics athletes. By having fun together in a variety of sports ranging from basketball to golf to figure skating, Unified Sports athletes and partners improve their physical fitness, sharpen their skills, challenge the competition and help to overcome prejudices about intellectual disability.

Special Olympics Unified Sports has partnered with the Delaware Interescholastic Athletic Association. This partnership was introduced at the 2013 Delaware Track & Field state championship in May. WATCH THE VIDEO ... (http://www.youtube.com/watch?v=40qjd-QwJyE)

Delaware's First Unified Flag Football League

Oct 21, 2015 | Posted by Krystle Rich | Featured Sports, Football, Local Sports, News

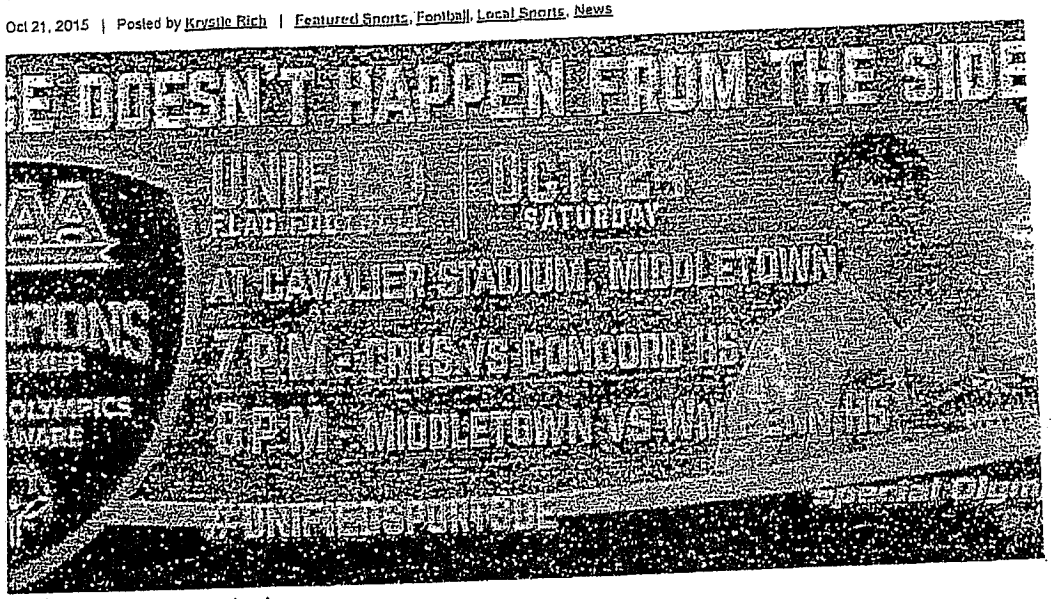


Photo Credit: SODE Facebook

DOVER, Del- It is time for student athletes with disabilities to get more respect.

The Delaware Interscholastic Athlete Association (DIAA) and Special Olympics Delaware (SODE) are teaming up to do just that.

The new program centered around flag football will team up student athletes with and without disabilities to complete on the same fields as varsity high school players.

"The goal is to untimely have is every public high school in Delaware to have a unified flag football team where special needs students get together with high school athletes," Jon Buzby, SODE *Director of Media Relations said.*

Breaking barriers between athletes with and without disabilities is a goal of unified sports. Building friendships on and off the field is what the program aims for.

"If our special athletes are teamed up with athletes from different high schools and are part of that sports culture, they will be respected as people and athletes," Buzby said. "That's what they deserve."

The four schools participating in the pilot program are: Caesar Rodney, Concord, Middletown and William Penn.

The first game kicks off on Saturday, Oct. 24 at Cavalier Stadium in Middletown. Admission is free to the general public.

7 p.m. Concord vs. Caesar Rodney
8 p.m Middletown vs. William Penn.
Other game scheduled:

Oct. 31, SODE Fall Festival at St. Andrews School, Time TBD
Dec. 5, Delaware Stadium, Time TBD.
For more information on joining a league, contact Jon Buzby:

jbuzby@udel.edu

Work: (302) 831-3484

Cell: (302) 740-1033

Generally, use the active rather than the passive voice:

EXAMPLE:

Use: The Chairman appoints members of the committee.

Avoid: Members of the committee are appointed by the chairman.

Generally, use the third person:

EXAMPLE:

Use: The applicant shall file the appropriate forms.

Avoid: You shall file the appropriate form.

If an idea can be accurately expressed either positively or negatively, express it positively. The negative form is appropriate where a provision expresses a prohibition. Negative words should not be used where provisions provide only advisory guidance.

7.3 Tabulation and Use of Bullets

Tabulation is used to arrange the structure of subdivisions in a document. All items in the tabulated enumeration must belong to the same class. Each item listed must be parallel to the introductory language. The following tabulation is incorrect because each subdivision is not parallel in substance or form to the introductory language:

EXAMPLE:

1.1 An applicant for licensure shall:

1.1.1 Complete the application for examination;

1.1.2 Submit in advance the examination fee; and

1.1.3 Eligibility for licensure by reciprocity.

(Language not parallel)

Subdivision 1.1.3 should read, "Be eligible for licensure by reciprocity."

The following guidelines apply when using displayed lists:

1. In most cases, the introductory language to a displayed list should end in a colon.
2. All items in a displayed list should begin with a capital letter, whether the entry is a word, a sentence fragment, a full sentence, or numerous sentences.
3. Each item should end with a semicolon or period, and a period should be used after the last item if it is the end of a sentence.
4. Items should end with periods if the items are complete sentences or if it is anticipated that the list will be modified often.
5. If using semicolons and the list consists of alternatives, "or" should be placed after the second to last item.
6. If using semicolons and the list is inclusive, "and" should be placed after the second to last item.
7. Language should not be added after a displayed list that continues the sentence of the introductory language.
8. The automatic numbering feature of word processing programs should not be used. Each number should be typed individually.

If a displayed list is not an exhaustive list and uses "but ... not limited to" in the introductory language or if it is a list of suggestions, the list should be bulleted and not numbered.

EXAMPLE

9.4.4 Sources of CE credits include but are not limited to the following:

- Programs sponsored by national funeral service organizations.
- Programs sponsored by state associations.
- Program provided by local associations.
- Programs provided by suppliers.
- Independent study courses for which there is an assessment of knowledge.
- College courses.

9.4.5 The recommended areas include but are not limited to the following:

- Grief counseling
- Professional conduct, business ethics or legal aspects relating to practice in the profession.
- Business management concepts relating to delivery of goods and services.
- Technical aspects of the profession.
- Public relations.
- After care counseling.

9.4.6 Application for CE program approval shall include the following:

9.4.6.1 Date and location.

9.4.6.2 Description of program subject, material, and content.

9.4.6.3 Program schedule to time segments in subject content areas for which approval of, and determination of credit is required.

9.4.6.4 Name of instructor, background, and expertise.

9.4.6.5 Name and position of person making request for program approval.

7.4 Use of "shall", "may", "may not", and "must"

Use "shall" in the imperative sense to express a duty or obligation to act. The term "shall" is generally used in connection with statutory mandates. "May" is permissive and generally expresses a right, privilege, or power. When an individual is authorized but not ordered to act, the term "may" is appropriate. If an obligation to act is intended, "shall" is used.

Use "may not" when a right, privilege, or power is restricted. Using "shall not" negates the obligation but not the permission to act; therefore, "may not" is the stronger prohibition. Wherever possible, the words "shall" or "may" are used in place of other terms such as "is authorized to", "is empowered to", "is directed to", "has the duty to", "must", and similar phrases. However, if certain action is intended to be a condition before accruing a right or privilege, the word "must" is used instead of "shall" or "may" (e.g., "In order to have your regulations published, you must file them by the deadline.")

When the word "shall" is used, the subject of the sentence must be a person, committee, or some other entity that has the power to make a decision or take an action. For this reason, do not use the word "shall" to declare a legal result or state a condition. When writing a sentence that contains the word "shall", check for proper use of the word by reading the sentence to yourself and substituting the phrase "has the duty to" for "shall".

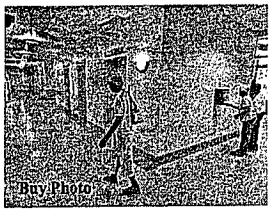
EXAMPLE:

Use: A practitioner shall perform clinical work only in designated areas.

Avoid: Clinical work shall be performed only in designated areas

NRA wins court ruling against WHA

Sean O'Sullivan, The News Journal Published 7:15 p.m. ET March 18, 2014 | Updated 9:01 a.m. ET March 19, 2014



(Photo: ROBERT CRAIG/THE NEWS JOURNAL)

In a surprising blow to public housing officials and a clear win for the National Rifle Association (http://home.nra.org/), the Delaware Supreme Court (http://courts.delaware.gov/Supreme/index.stm) has ruled that the Wilmington Housing Authority (http://www.wha.net/) cannot set limits on residents' rights to carry guns in common areas of public housing.

The unanimous ruling by the state Supreme Court noted that under the Delaware Constitution, which offers broader gun rights protections than the U.S. Constitution, the WHA limitations on possessing a gun were "overbroad and burden the right to bear arms more than is reasonably necessary."

"Public Housing is 'a home as well as a government building,' " Justice Henry DuPont Ridgely wrote for the panel.

The ruling directly contradicts a July 2012 ruling by U.S. District Judge Leonard Stark who found that the limits on residents carrying guns in common areas like lounges, halls and laundry rooms was "a reasonable policy."

Because the case turned on questions of state, not federal law, the Delaware Supreme Court ruling prevails.

Poll: Guns in public housing (http://archive.delawareonline.com/poll/2014-03-19/7892044)

The Delaware justices wrote that in certain circumstances, the WHA could limit the "use" of firearms but it could not limit "possession" of firearms in what amounted to parts of the residents' homes.

The state justices said that more narrow regulations – like barring residents from bringing guns into portions of WHA buildings where state employees work – may be acceptable.

"It is definitely a win," said attorney Francis X. Pileggi, who represented two WHA residents in the NRA-funded lawsuit. "The result is excellent and exactly what we were looking for."

WHA Executive Director Frederick S. Purnell said he was very disappointed, "Overall I think the ruling sets us back."

Purnell said he thought the restrictions on guns in common areas "struck a good balance between the right to bear arms and the overall mandate we have to provide a safe environment for our residents."

Before the ruling, Purnell and others said that public housing agencies across the nation were watching the case to see what kind of limits could be placed on gun possession.

Purnell said the WHA would comply with Tuesday's ruling and said he does not expect there will be an appeal.

WHA attorney Barry Willoughby said he was at least pleased that the court adopted a standard of review which may give the WHA some limited authority to regulate weapons in future.

But, he said, "Effectively the case is over."

Before Tuesday's decision, residents of Wilmington public housing were divided. Some strongly opposed any weapons in the buildings while others said they wanted to have a firearm for self defense. And some, like WHA resident Mary Williams, who favored allowing residents to have guns, opposed guns in common areas.

"You don't need that," she said in August. "Just keep it in your room."

The case against the WHA started June 2010 when two WHA residents filed suit to keep guns in their public housing units. At that time, the WHA had a broad ban on all guns in public housing. But weeks later, the U.S. Supreme Court made a landmark ruling that state and local governments could not impose a blanket ban on gun ownership.

So in Sept. 2010, WHA dropped its flat ban on guns and instead adopted a policy that placed restrictions on guns in common areas of public housing like television lounges and laundry rooms. The NRA and the WHA plaintiffs, however, persisted in their legal challenge arguing the new restrictions improperly limited their rights. District Judge Stark disagreed, finding the limits were a reasonable safety measure.

The NRA then appealed to the U.S. Third Circuit Court of Appeals arguing that the issues in the case involved questions related to the Delaware Constitution, not the U.S. Constitution. The federal appeals court agreed in August and sent the matter to the Delaware Supreme Court for clarification.

As a technical matter, the case will now go back to the U.S. Third Circuit Court of Appeals, which will in turn likely send the case back to District Judge Stark. But it appears that will not be needed, as WHA officials said Tuesday they will comply with the Delaware Supreme Court ruling and lift the restriction on guns in common areas.

In court, the WHA had argued it was unsafe to allow guns to be carried in common areas because it could lead to a situation where the person with the largest caliber gun gets control of the television remote. On Tuesday, Pileggi said that was a false argument because other state and federal laws restrict the use of guns and place limits on how people can behave with firearms.

He said if someone used a gun in a threatening manner to gain control of the TV remote, then they could be charged with terroristic threatening.

Also, Pileggi said he did not believe this case would end up limiting other public institutions from putting restrictions on guns in places like courthouses and town halls.

"In this opinion, the court went out of its way to distinguish public residences from government buildings," he said. "There is a huge distinction" he said, because one is a home and the other is not.

Contact Sean O'Sullivan at 302 324-2777 or sosullivan@delawareonline.com or on Twitter @SeanGOSullivan

DELAWARE HOUSE DEMOCRATS

- Home (/home)
- Learn Who We Are (/about)
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  - Members (/members)
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  - Videos (/videos)
  - Blog (/blog)
  - Press Releases (/media/press)
  - Contact Information (/page/contact-information)
  - Newsletters (/newsletters)
- Write Your Rep. (/Contact)
- Appointments (/petition/speaker-house-appointments)
- Join our e-mail list! (/signup/join-our-e-mail-list)

House Bills Would Encourage More Delawareans to Register and Vote

DOVER – Lawmakers unveiled a trio of bills Wednesday aimed at increasing voter turnout and encouraging more people to participate in the electoral process.

The measures would consolidate state and presidential primaries, open early voting and establish automatic voter registration at the Division of Motor Vehicles. Taken together, the bills would have the effect of registering more Delawareans to vote while increasing opportunities to vote.

House Bill 90, sponsored by **Rep. David Bentz**, would have Delaware join the other 34 states that have early voting, allowing residents to cast ballots before Election Day. The measure would require the Department of Elections to offer early voting to Delawareans for 10 days before a general, primary or special election, including the weekend before Election Day. Maryland and New Jersey are among the states that offer early voting.

"We need to do everything in our power to make it easier for working Delawareans across the state to vote in our elections, because when everyone participates, we all stand to do better as a society," said Rep. Bentz, D-Newark/Bear. "There are residents who for one reason or another have a difficult time making it to the polls on one particular day, whether it's due to work, family obligations or illness. Providing more opportunities for Delawareans to vote will increase participation."

A **2013 Brennan Center for Justice report (https://www.brennancenter.org/publication/early-voting-what-works)** found that early voting reduces stress on the voting system, creates shorter lines on Election Day, and increases access to voting as well as voter satisfaction. It also improves poll worker performance by allowing workers and volunteers to gain valuable experience before handling the high volumes of Election Day, and provides more opportunity to discover and correct voting machine errors, re-check electronic systems, and fine-tune poll site management.

House Bill 89, sponsored by **Rep. Stephanie T. Bolden**, would move Delaware's state primary elections to coincide with its presidential primary elections.

Currently, Delaware holds its presidential primaries for both major parties on the fourth Tuesday in April. However, the First State's primaries for statewide and local political offices are held on the second Tuesday after the first Monday in September. The separate dates can **create confusion (https://twitter.com/MollyMurraytnj/status/724956560321961984)** among voters, while turnout for the state primary dramatically drops off from the presidential primary.

In 2016, 30 percent of registered Democrats and 37.7 percent of registered Republicans voted in the presidential primary. But those numbers dropped to 20 percent of Democrats and 16 percent of Republicans in the state primary later last year. In 2012, Republican primary voter participation dropped from 16 percent in the presidential primary to 13 percent in the state primary.

"Democracy works best when everyone gets involved and participates," said Rep. Bolden, D-Wilmington East. "We've seen from year to year that far more people vote in the presidential primaries than in the state primaries of the same year. In some cases, voters turning out to vote for president are confused when they can't vote in a primary for governor, Congress or local legislative races.

"Consolidating the presidential and state primaries will save the state money, reduce voter confusion and increase turnout. We owe it to residents to do whatever we can to improve our electoral process, and I'm confident that this is a common-sense move in the right direction."

House Bill 89, which is co-sponsored by a bipartisan group of 13 legislators, would move all state primaries to the fourth Tuesday in April. The change would take effect with the presidential election in 2020, but it also would move "off-year" elections (2022, 2026, etc.) to the same Tuesday.

According to the National Conference of State Legislatures, at least 17 other states already hold their state primaries on the same day as their presidential primaries. Surrounding states Maryland, New Jersey and Pennsylvania are among those states with both primaries on the same day.

A third bill, House Bill 79, sponsored by Rep. Bentz, would establish automatic voter registration at state DMV offices. Delaware's Motor Voter Law, an "eSignature" model, is considered one of the better such policies in the country. The bill would require eligible voters to decline having their information automatically shared with the Department of Elections for registration. Six states and the District of Columbia have enacted similar policies.

The bills have been assigned to the House Administration Committee.

###

Home (/) › House Bills Would Encourage More Delawareans to Register and Vote

NATIONAL CONFERENCE of STATE LEGISLATURES

Absentee and Early Voting

3/20/2017

Latest Developments: In **North Carolina**, the 4th U.S. Circuit Court of Appeals struck down that state's 2013 law th reduced early voting hours. This change is not reflected below, pending actions state authorities may take in respons the ruling.

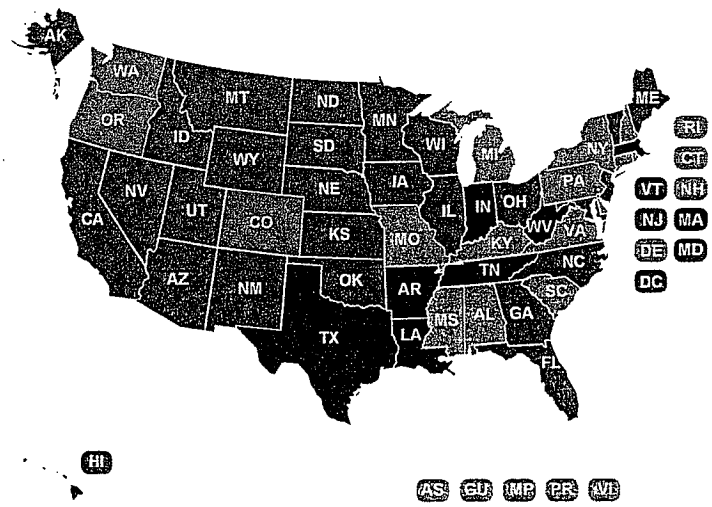
Most states have a method for any eligible voter to cast a ballot before Election Day, either during the early voting pe or by requesting an absentee ballot. In 13 states, early voting is not available and an excuse is required to request a absentee ballot.

States offer three ways for voters to cast a ballot before Election Day:

1. **Early Voting:** In 37 states (including 3 that mail ballots to all voters) and the District of Columbia, any qualified voter may cast a ballot in person during a designated period p Election Day. No excuse or justification is required.
2. **Absentee Voting:** All states will mail an absentee ballot to certain voters who request one. The voter may return the ballot by mail or in person. In 20 states, an excuse is rec while 27 states and the District of Columbia permit any qualified voter to vote absentee without offering an excuse. Some states offer a permanent absentee ballot list: once a asks to be added to the list, s/he will automatically receive an absentee ballot for all future elections.
3. **Mail Voting:** A ballot is automatically mailed to every eligible voter (no request or application is necessary). In-person voting sites may also be available for voters who would vote in-person and to provide additional services to voters. Three states mail ballots to all eligible voters for every election. Other states may provide this option for some type elections.

Scroll over the map below for state-by state details.

No-excuse absentee voting	Early voting	Early voting AND no-excuse absentee voting	All-mail voting	No early voting: excuse required for absentee



Overview

The table below details the types of pre-election day voting that are available in each state. Information on the details each category may be found below the table.

PRE-ELECTION DAY VOTING

State	In-Person	By Mail			
	Early Voting	No-Excuse Absentee	Absentee; Excuse Required	All-Mail Voting	Permanent Absentee Sta
Alabama			•		
Alaska	•	•		(a)	
Arizona	•	•		(a)	•
Arkansas	•		•	(a)	
California	•	•		(a)	•
Colorado				•	
Connecticut			•		•
Delaware			•		
D.C.	•	•			•
Florida	•	•		(a)	
Georgia	•	•			
Hawaii	•	•		(a)	•
Idaho	(b)	•		(a)	
Illinois	•	•			
Indiana	(b)		•		
Iowa	(b)	•			
Kansas	•	•		(a)	
Kentucky			•		
Louisiana	•		•		
Maine	(b)	•			
Maryland	•	•		(a)	
Massachusetts	(c)		•		

State	In-Person	By Mail			
Michigan			•		
Minnesota	(b)	•		(a)	•
Mississippi			•		
Missouri			•	(a)	
Montana	(b)	•		(a)	•
Nebraska	•	•		(a)	
Nevada	•	•		(a)	
New Hampshire			•		
New Jersey	(b)	•		(a)	•
New Mexico	•	•		(a)	
New York			•		
North Carolina	•	•			
North Dakota	•	•		(a)	
Ohio	(b)	•			
Oklahoma	(b)	•			
Oregon				•	
Pennsylvania			•		
Rhode Island			•		
South Carolina			•		
South Dakota	(b)	•			
Tennessee	•		•		
Texas	•		•		
Utah	•	•			•
Vermont	(b)	•			

State	In-Person	By Mail			
Virginia			•		
Washington				•	
West Virginia	•		•		
Wisconsin	(b)	•			
Wyoming	(b)	•			
TOTAL	34 states + DC	27 states + DC	20 states	3 states	8 states + DC

Source: National Conference of State Legislatures, January 2016.

(a) Certain elections may be held entirely by mail. The circumstances under which all-mail elections are permitted va from state to state.

(b) Although these states do not have Early Voting in the traditional sense, within a certain period of time before an election they do allow a voter to apply in person for an absentee ballot (without an excuse) and cast that ballot in one to an election official's office. This is often known as "in-person absentee" voting.

(c) Massachusetts has Early Voting only during even-year November elections, beginning in 2016. Currently it does permit Early Voting in primaries or municipal elections.

Early Voting

More than two-thirds of the states--37, plus the District of Columbia--offer some sort of early voting. Early voting allo voters to visit an election official's office or, in some states, other satellite voting locations, and cast a vote in person without offering an excuse for why the voter is unable to vote on Election Day. Some states also allow voters to receive, fill out and cast absentee ballot in person at the elections office or at a satellite location rather than returning it through through the mail. This is often reffered to as in-person absentee voting. Satellite voting locations vary by state, and may include other county and state offices (besides the election offic office), grocery stores, shopping malls, schools, libraries, and other locations. More detailed information can be foun NCSL's State Laws Governing Early Voting page.

The time period for early voting varies from state to state:

- The date on which early voting begins may be as early as 45 days before the election, or as late as the Friday before the election. The average starting time for early voting across all 34 states is 22 days before the electio
- Early voting typically ends just a few days before Election Day: seven days before the election in two states, o Thursday before the election in one state, the Friday before in eight states, the Saturday before in seven state and the Monday before Election Day in 13 states.
- Early voting periods range in length from four days to 45 days; the average across all 33 states is 19 days.
- Of the states that allow early in-person voting, 22 and the District of Columbia allow some weekend early votir
    - Saturday: 18 states + the District of Columbia provide for voting on Saturday. 4 additional states (Californ Kansas, Vermont and Massachusetts) leave it up to county clerks who may choose to allow Saturday voti
    - Sunday: 4 states (Alaska, Illinois, Ohio and Maryland) allow for Sunday voting. 5 states (California, Florid Georgia, Nevada and Massachusetts) leave it up to county clerks who may choose to be open on Sunda

No-Excuse Absentee Voting

Absentee voting is conducted by mail-in paper ballot prior to the day of the election. States typically require that a voter fill out an application to receive an absentee ballot. Many states help facilitate this process by making absentee ballot applications available online for voters to print and send, and at least states (Florida, Louisiana, Maryland, Minnesota and Utah) permit a voter to submit an application entirely online. Arizona has some counties that have online absentee ballot applications, and in Detroit, Michigan, voters can request an absentee ballot through a smartphone app.

While all states offer some version of absentee voting, there is quite a lot of variation in states' procedures. For instance, some states offer "no-excuse" absentee voting, allowing any registered voter to request an absentee without requiring that the voter state a reason his/her desire to vote absentee. Some states also allow a time period before the election for voters to appear at the elections office or other designated location in person to request, fill out and cast an absentee ballot in on stop. Still states permit voters to vote absentee only under a limited set of circumstances.

The following 27 states and D.C. offer "no-excuse" absentee voting:

NO-EXCUSE ABSENTEE VOTING

Alaska	Kansas	North Dakota
Arizona	Maine	Ohio
California	Maryland	Oklahoma
District of Columbia	Minnesota	South Dakota
Florida	Montana	Utah
Georgia	Nebraska	Vermont
Hawaii	Nevada	Wisconsin
Idaho	New Jersey	Wyoming
Illinois	New Mexico	
Iowa	North Carolina	

Source: National Conference of State Legislatures, January 2016

Permanent Absentee Voting

Some states permit voters to join a permanent absentee voting list. Once a voter opts in, s/he will receive an absente ballot automatically for all future elections. The states that offer permanent absentee voting to any voter are:

- Arizona: Ariz. Rev. Stat. §16-544(A)
- California:Cal. Elec. Code §3200
- Connecticut
- District of Columbia: D.C. Law §1-1001.07
- Hawaii: Hawaii Rev. Stat. §15-4(c)
- Minnesota: Minn. Rev. Stat. §203B.04(5)
- Montana: Mont. Code Ann. §13-13-212(4)
- New Jersey: N.J. Stat. §19:63-3(e)
- Utah: Utah Code §20A-3-304(4)

At least eight states offer permanent absentee status to a limited number of voters who meet certain criteria:

- Alaska (Alaska Admin. Code tit. 6, § 25.650) - voters

who reside in a remote area where distance, terrain, or other natural conditions deny the voter reasonable access to the polling place
- Delaware (Del. Code Ann. Tit. 15, §5503(k)) - military and overseas voters, and their spouses and dependents; voters who are ill or physically disabled; voters who are otherwise authorized by federal law to vote by absentee ballot
- Kansas (Kan. Stat. Ann. §25-1122(g)) - voters with a permanent disability or an illness diagnosed as permanent
- Massachusetts (Mass. Gen. Laws ch. 54, §86) - permanently disabled voters
- Mississippi (Miss. Code Ann. § 23-15-629) - perm disabled voters
- Missouri (Mo. Rev. Stat. §115.284) - permanent disabled voters
- New York (N.Y. Election Law §8-400) - perman disabled voters
- West Virginia (W. Va. Code §3-3-2(b)) - voters who are permanently and totally disabled and unable to vote at the polls

Mail Voting

Three states -- Oregon, Washington and Colorado -- conduct all elections by mail. A ballot is automatically mailed to every registered voter in advance of Election Day, and traditional in-person voting precincts are not available. Howe these states still provide one or more locations for voters to return mail ballots, vote in-person if they would like, and receive other voter services. Learn more about each state's vote-by-mail program: Oregon, Washington, Colorado.

Nineteen other states allow certain elections to be held by mail. More information can be found on NCSL's All-Mail Elections (aka Vote-By-Mail) webpage.

Early and Absentee Voting in Your State

Are you looking for information on how to vote early or by absentee ballot in an upcoming election? While NCSL is r involved in holding elections and cannot provide information or advice on how, when or where to vote in your state, v are pleased to provide this link to a page which will direct you to the answers you need regarding your state's laws: ' Vote?

Military Voters

All states permit members of the military who are stationed overseas, their dependents, and other U.S. citizens living abroad to vote by absentee ballot. For more information, please visit the Overseas Vote Foundation.

Additional Resources

- NCSL's State Laws Governing Early Voting page
- Article from NCSL's elections newsletter, *The Canvass*: Pre-Election Day Voting—Just the FAQs, Ma'am
- FVAP's Absentee and Early Voting Myths and Realities Fact Sheet
- NCSL's video Q&A with MIT's Charles Stewart III on early voting and turnout
- The Early Voting Information Center (EVIC) based at Reed College
- The U.S. Vote Foundation has state dates deadlines for requesting and returning absentee ballots, as well as early voting periods
- Long Distance Voter, a non-profit with information on registering and voting by mail

149th GENERAL ASSEMBLY
FISCAL NOTE

BILL:	HOUSE BILL NO. 90
SPONSOR:	Representative Bentz
DESCRIPTION:	AN ACT TO AMEND TITLE 15 OF THE DELAWARE CODE RELATING TO EARLY VOTING.

Assumptions:

1. This Act will become effective January 1, 2020.

2. This Act establishes in-person early voting for the State of Delaware. Registered voters will be allowed to vote in-person for at least 10 days prior to an election, up to and including the Saturday and Sunday immediately prior to the election at locations determined to be by the Elections Commissioner. The Elections Commissioner is also charged with determining whether such voting should occur by a voting machine or a paper ballot. All other procedures relating to conducting voting are the same as for Election Day voting. For statewide elections the statue directs that there must be at least one-in person polling place in each county and an additional location in the City of Wilmington.

3. The Department of Elections estimates the fiscal impact of this Act will be $128,000 for FY2021. This cost is dependent on whether there is a Primary Election and a General Election versus one statewide election. The cost associated with implementing in-person early voting consists of $64,000 for 13 Casual/Seasonal positions for 10 days at 4 poll sites. There are two elections in calendar year 2020, the Primary Election and the General Election. Therefore, the personnel costs will be $128,000 for both elections.

Cost:

FY 2019	$-0-
FY 2020	$-0-
FY 2021	$128,000

Prepared by Jackie Griffith
Office of the Controller General

STATE GOVERNMENT

Mixed day for voting

Felon limit eased; absentee rules upheld

By Doug Denison
The News Journal

DOVER — Shortly after one chamber of the General Assembly voted Tuesday to enact a constitutional amendment expanding voting rights for convicted felons, the other chose to reject a proposed amendment that would have allowed more citizens to vote absentee.

Many felons in Delaware now will be able to vote immediately after discharging their criminal sentences, according to an amendment passed by the Senate removing a constitutional provision barring felons from voting for five years after completing their punishments.

In the House, a Democratic bill to change constitutional limitations on absentee balloting failed by a single vote. The legislation sought to remove all qualifications for casting an absentee ballot, which currently is allowed only because of military service, family illness or disability, travel or religious objections.

Twenty-seven states allow so-called "no excuse" absentee voting.

Amendments to the state constitution require two-thirds majorities in both chambers of the General Assembly in two consecutive legislative sessions separated by a general election. They do not need the governor's signature.

The felon voting-rights measure, introduced last year, cleared its final hurdle in the Senate, 15-6.

Those convicted of murder, public corruption or sex crimes still would be barred from voting for life in Delaware—

See VOTING, Page B2

Voting: Limits on absentee ballots will stay

Continued from Page B1

one of 12 states that revoke voting rights for certain criminals, according to the nonprofit ProCon.org.

Ben Jealous, president and CEO of the NAACP, was in the Senate for the vote and called the amendment a victory for civil rights.

"This law was one of the last pillars of Jim Crow voter-suppression legislation. In this time, in this country, where so many other states are suppressing the vote, it's heartening to see Delaware take the lead in restoring the vote to people who have made a mistake but paid their price for it and earned the right to have their vote restored," Jealous said.

The amendment was named the Hazel D. Plant Voter Restoration Act in honor of the late Wilmington state representative who pushed for its passage up to her death in 2010. Her husband, the late Rep. Al. O. Plant, worked on the measure in the years before his death in 2000.

Wilmington Rep. Helene Keeley sponsored the latest version of the amendment.

"It's very emotional for me to know that Hazel and Al are up in heaven saying 'You know what, we finally got it done.' It was something she really wanted to have before she passed away, and it just never came to fruition," Keeley said.

Two Senate Republicans voted for the amendment Tuesday: Sen. Greg Lavelle, of Sharpley, and Sen. Catherine Cloutier, of Brandywine Hundred.

Sen. Colin Bonini, R-Dover South, voted no and said it is appropriate to bar felons from voting for five years after the fulfillment of their sentences.

"An immediate turnaround makes me a little uncomfortable," he said. I thought five years was a reasonable waiting period," he said. "I don't see a particular reason to change that now."

Absentee amendment

No Republicans voted for the absentee balloting amendment, which was

Rep. Helene Keeley

introduced for the first time this year. All 26 House Democrats voted for the measure, one short of the required two-thirds majority.

Minority Leader Dan Short, of Seaford, said his caucus believed the proposed amendment would leave absentee voting rules too "open-ended" and raised the specter of voter fraud.

"Voting is a sacred right in this country, and I think that when we lose sight of the fact that Election Day is the day you go out and vote for candidates, the casting of that absentee ballot is something, I think, that has an opportunity not just for voter fraud, but for immense influence versus actual voting on that particular day," he said.

Majority Leader Valerie Longhurst charged the Republicans with playing politics and said there were at least seven GOP representatives who previously had agreed to vote yes but were told not to by their leaders.

"If you think it's not partisan, it is," she said. "I don't know why they want to suppress votes."

Bill sponsor Rep. Earl Jaques, D-Glasgow, said it's wrong that Delaware law currently allows a disabled person to vote absentee but could bar that person's full-time caregiver from doing the same.

"It's not a party thing; it's just allowing people the opportunity to vote," Jaques said. "We should encourage everybody in this country to vote and make it as easy and accessible as possible."

The only way the absentee voting amendment could be reconsidered this session is if a member of the prevailing side in the vote; in this case a Republican, asks for the roll call to be rescinded and retaken.

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