



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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October 29, 2010

Ms. Susan K. Haberstroh
Education Associate
Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

RE: 14 DE Reg. 221 [DOE Proposed Prohibition Against Discrimination Regulation]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to amend its *Prohibition of Discrimination* regulation. Specifically, the DOE is now issuing a proposed regulation adding "genetic information" to its list of prohibited bases for discrimination in DOE funded or approved programs. The proposed regulation was published as 14 DE Reg. 221 in the October 1, 2010 issue of the Register of Regulations. Council has the following observations.

As background, in 2005, the SCPD recommended that the Department of Education add "genetic information" to the prohibited bases for discrimination in DOE funded or approved programs. The Council noted that State employment discrimination law barred discrimination on this basis. Consistent with the attached DOE final regulation [9 DE Reg. 1069-1070 (January 1, 2006)], the DOE declined to add "genetic information" since it was not included in a Governor's Executive Order. SCPD then contacted Governor Minner who issued Executive Order 86 barring employment discrimination based on genetic information [9 DE Reg. 1994 (June 1, 2006)]. However, the DOE never amended its regulation. Governor Markell later issued Executive Order 8 on August 11, 2009. This Order continued the bar against employment discrimination based on genetic information.

SCPD endorses the proposed regulation since discrimination on the basis of "genetic information" would have a disproportionate effect on persons with hereditary predispositions correlated with illness or disability.

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

Sincerely,

A handwritten signature in black ink, reading "Daniese McMullin-Powell". The signature is written in a cursive, flowing style.

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

cc: The Honorable Lillian Lowery
Dr. Teri Quinn Gray
Ms. Martha Toomey
Ms. Paula Fontello, Esq.
Ms. Terry Hickey, Esq.
Mr. John Hindman, Esq.
Mr. Charlie Michels
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

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reveal the identity of a horse from which the sample was taken.

8.4.3.5.13 If an Act of God, power failure, accident, strike or other action beyond the control of the Commission occurs, the results of the primary official test shall be accepted as prima facie evidence.

***Please Note:** As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Delaware Harness Racing Commission is available at: <http://www.state.de.us/deptagri/harness/index.shtml>.

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 225

REGULATORY IMPLEMENTING ORDER**225 Prohibition of Discrimination****I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to amend 14 DE Admin. Code 225 Prohibition of Discrimination in order to align the wording of this regulation with the nondiscrimination statement on the Department stationary, the Employee Handbook and the Department's application for employment.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on October 20, 2005, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities. The Councils' commented that the proposed regulations do not include one class included in the State employment discrimination statute (Title 19 Del.C. §711) "genetic information".

The Department has declined to add "genetic information" since we were responding to Executive Order 10 which did not include it. The regulation is now in line with the Department's nondiscrimination statement. The State Director of HR Management has told us that it is not required unless specifically required by one of our federal funding sources and that not specifically mentioning it does not negate it being protected.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code in order to align the wording of this regulation with the nondiscrimination statement on the Department stationary, the Employee Handbook and the Department's application for employment.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 225. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 225 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 225 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 DE Admin. Code 225 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 225 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. §122 on December 14, 2005. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 14th day of December 2005.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

225 Prohibition of Discrimination**1.0 Prohibition of Discrimination**

No person in the State of Delaware, shall, on the basis of race, color, creed religion, national origin, sex, sexual orientation, marital status, disability, age or gender Vietnam Era veteran's status, be unlawfully excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving

approval or financial assistance from or through the Delaware Department of Education.

2 DE Reg. 1246 (1/1/99)

7 DE Reg. 1177 (3/1/04)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 525

REGULATORY IMPLEMENTING ORDER

525 Requirements for Career Technical Education Programs

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 525 Requirements for Career Technical Education Programs in order to add the phrase "or under unique circumstances as approved by the Department of Education" to 3.0 Cooperative Education and to 4.0 Diversified Occupations Programs. The word "quarterly" was added to 4.1 under Diversified Education Programs to clarify the number of visits the teacher or counselor must make and "Relative Caregiver" was added to parent or guardian in 3.3 and 4.3. The Name of the Delaware Advisory Council on Career and Technical Education was also corrected in 2.14, and the acronyms for IDEA and IEP were fully identified in 3.4 and 4.4.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on October 20, 2005, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities. The editorial changes were made, the phrase "at least" was added before the word "quarterly" in 3.1 and 4.1 and " or charter school" was added in 3.3 and 4.3 as recommended.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code in order to add the phrase "or under unique circumstances as approved by the Department of Education" to 3.0 Cooperative Education and to 4.0 Diversified Occupations Programs. The word "quarterly"

was added to 4.1 under Diversified Education Programs to clarify the number of visits the teacher or counselor must make and "Relative Caregiver" was added to parent or guardian in 3.3 and 4.3. The Name of the Delaware Advisory Council on Career and Technical Education was corrected in 2.14.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 525. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 525 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 525 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 DE Admin. Code 525 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 525 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. §122 on December 15, 2005. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of December 2005.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education
Approved this 15th day of December 2005

STATE BOARD OF EDUCATION

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