



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

June 1, 2011

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

RE: 14 DE Reg. 1222 [DOE Final Interpreter/Tutor for Deaf & Hard of Hearing Regulation]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) and Council on Deaf & Hard of Hearing Equality (CODHHE) have reviewed the Department of Education's (DOE's) final *Credentials for Interpreter Tutor for the Deaf and Hard of Hearing* regulation. The regulation was published as 14 DE Reg. 1222 in the May 1, 2011 issue of the Register of Regulations. The Councils commented on the proposed version of this regulation in the attached March 30, 2011 letter and have the following concerns and observations.

First, the Councils recommended not limiting the authorizing statute to §1331(b). SCPD and CODHHE appreciate that DOE amended the reference to include Title 14 in its entirety.

Second, the Councils recommend insertion of a reference to the Deaf or Hard of Hearing Child's Bill of Rights. The DOE declined to adopt the recommendation based on the following:

The Department did not incorporate changes related to including language that would broaden the scope of the regulation. The regulation is related to the credentialing of Interpreter/Tutors for the Deaf/Hard of Hearing and not the development of the Individual Education Program (IEP).

At 1222.

There are two (2) concerns with this approach: 1) it violates the agreement reached on January 5, 2011 by representatives of the DOE, Sterck, SCPD CODHHE, and GACEC;

and 2) it misconstrues the Deaf or Hard of Hearing Child's Bill of Rights as limited to IEP development.

Third, the Councils recommended transferring a permit renewal standard from a definition section to another section. We appreciate that DOE agreed and effected amendments to §§2.0 and 4.2.

Fourth, the Councils recommended substitution of a single reference to "unfit" for several references in §§6.1.4 and 7.1. The changes were effected. However, the grammar in §7.1 is infirm. The Section now reads as follows:

7.1. A Permit issued under the provisions of this regulation may be revoked upon a finding of meets the definition of "Unfit" in 2.0 of this regulation and must be revoked upon a finding that the permit holder made a materially false or misleading statement in his or her permit application or upon finding that the permit holder failed to maintain the requirements for a Permit as designated in 3.0 herein.

Fifth, the Councils identified several inconsistencies in the capitalization of "permit". The DOE corrected some references [e.g. §§1.1; 1.2; and 7.1 (one reference)] while failing to correct other references [e.g. §§2.0 and 7.1 (two references)].

Sixth, the Councils recommended restructuring §3.0. We appreciate that DOE added an amendment in this context.

Seventh, the Councils recommended that the following subsection be included as "1.4":

1.4. Notwithstanding Section 1.2, IEP or Section 504 Teams, with specific parental consent, use of non-licensed interpreters may be authorized in the limited context of extra curricular activities.

Given the limited number of certified interpreters in the State, "qualified" interpreters should be able to provide services in this context with consent from the parent/s. Allowing the use of a qualified interpreters who do not meet the requirements of §3.0 may increase access to extra curricular activities for students who are Deaf and Hard of Hearing. The Councils are concerned that this issue was not addressed by DOE and request the rationale for ignoring the commentary.

Finally, consistent with this letter, the March 30th letter was submitted by both SCPD and CODHHE; however, CODHHE was not referenced in the *Summary of Evidence and Information Submitted* section of the May 1, 1011 issue Register of Regulations.

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

Sincerely,



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



Loretta Sarro, Chairperson
Council on Deaf & Hard of Hearing
Equality

cc: The Honorable Teresa Schooley
The Honorable Quinn Johnson
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.
Ms. Julie Johnson, DE Families for Hands & Voices
Ms. Della Thomas, Statewide Programs
Council on Deaf & Hard of Hearing Equality
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

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March 30, 2011

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

RE: 14 DE Reg. 848 [DOE Proposed Interpreter/Tutor for Deaf & Hard of Hearing Regulation]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) and Council on Deaf & Hard of Hearing Equality (CODHHE) have reviewed the Department of Education's (DOE's) proposal to amend its *Credentials for Interpreter Tutor for the Deaf and Hard of Hearing* regulation. The regulation was published as 14 DE Reg. 848 in the March 1, 2011 issue of the Register of Regulations. As background, CODHHE originally approached DOE regarding revision of the regulation in August 2009. A "working group" collaborated on the revisions and representatives of SCPD, CODHHE, the Governor's Advisory Council for Exceptional Citizens (GACEC), Delaware Families for Hands & Voices, Statewide Programs for the Deaf, Hard of Hearing and Deaf/Blind and the Disabilities Law Program met with DOE on January 5, 2011 to reconcile competing drafts of a prepublication version of this regulation. General consensus appeared to be reached on most, if not all, aspects of the regulation. The DOE has now formally published a proposed regulation. The Councils have the following observations.

First, consistent with the consensus reached on January 5, the following subsection should be included as "1.3":

1.3. This regulation shall be interpreted in conformity with Title 14 Del.C. §3112.

Title 14 Del.C. §3112 is the recently enacted Deaf or Hard of Hearing Child's Bill of Rights. In pertinent part, it contemplates IEPs being developed consistent with the following standard: "(t)he provision of optimal, direct, and ongoing language access to ...interpreters...and other special education personnel who are knowledgeable due to specific training and who are proficient in the child's primary communication mode or

language.” The interpreter/tutor regulation implements this and other aspects of the Bill of Rights. The statutory reference also reinforces application of the regulation to all public schools.

Second, consistent with the consensus reached on January 5, “pursuant to 14 Del.C. §1331(b)” should be deleted in Section 1.1 since this exclusive reference to the Delaware Code as the statutory basis for the regulation would only apply to credentials of interpreter/tutors for the Deaf and Hard of Hearing at the Margaret S. Sterck School. The intent of the regulation is to apply to interpreter/tutors in all public schools.

Third, in §2.0, definition of “permit”, the DOE may wish to review the following sentence: “Interpreter/Tutors shall renew permits every five years by meeting the minimum standards required by the RID Certification Maintenance Program.” There are two concerns:

A. Literally, the sentence indicates that simply meeting the maintenance program standards constitutes automatic permit renewal. At a minimum, it would be preferable to amend the sentence to read as follows: “Interpreter/Tutors shall apply for permit renewal every five years by submission of documentation satisfactory to the Department of fulfillment of the minimum standards required by the RID Certification Maintenance Program.”

B. It is somewhat odd to insert renewal standards in the definition of “permit”. The DOE could consider adding a “Permit Renewal” section which would cover “requirements” and “application procedures”. Compare Sections 3.0 and 4.0.

Fourth, in §6.1.4, consider substituting “unfitness” for “immorality...credentials” since the definition of “unfit” in §2.0 incorporates the listed bases. The same substitution could be used in §7.1.

Fifth, the Councils recommend deletion of “disloyalty” as a type of unfitness in the definition of “unfit” and §§6.1.4 and 7.1. Someone is not “unfit” to serve as an interpreter/tutor simply because he/she is applying for a job with another employer, is a union representative, or is a “whistleblower”.

Sixth, §6.1.3 is overbroad. It literally requires denial of a permit if an individual has “had a Permit, certificate or license revoked in another jurisdiction”. There is no requirement that the revocation be based on “cause”. For example, a permit could have simply been revoked because an individual let it lapse, did not submit renewal materials, etc. Compare the deleted version of this provision which required the revocation to be based on “cause”:

6.2.2 The applicant has had an educator Permit, certificate or license revoked in another jurisdiction for immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty of falsification of credentials.

The DOE could simply consider the following amendment:

6.1.3. Had a permit, certificate or license revoked in another jurisdiction based on a determination that the applicant was unfit.

Seventh, in §2.0, definition of “immorality”, the term “interpreter tutor” should be “interpreter/tutor”.

Eighth, the regulation is inconsistent in its capitalization of “permit”. Compare, e.g. §§1.1, 1.2, 2.0 (definition of “permit”), and 7.1 (not capitalized) with §§3.1, 4.1, 6.1, 6.13, and 7.1 (capitalized).

Ninth, in §1.2, “hearing” should be “Hearing”.

Tenth, in §3.0, the structure, conjunctions and punctuation are problematic. The section could be interpreted in different ways. Please consider the following substitute:

3.0 Requirements of a Permit.

Subject to the provisions in 6.0 below, the Department shall issue a Permit as an Interpreter/Tutor for the Deaf/Hard of Hearing to an individual who has a minimum of a Bachelor’s degree in any field from a regionally accredited college or university and either:

- 3.1. Holds national certification as a Generalist by RID; or
- 3.2. Is a certified member of RID as an EIPA credentialed interpreter who achieved a level 4.0 or higher on the Elementary or Secondary American Sign Language video stimulus tapes evaluation.

If this approach were adopted, §4.1.2 could then be amended to read as follows:

- 4.1.2. Evidence that the applicant has met either of the certification requirements defined in Section 3.1 or 3.2.

Eleventh, the following subsection should be included as “1.4”:

1.4. Notwithstanding Section 1.2, IEP or Section 504 Teams, with specific parental consent, use of non-licensed interpreters may be authorized in the limited context of extra curricular activities.

Given the limited number of certified interpreters in the State, “qualified” interpreters should be able to provide services in this context with consent from the parent/s. Allowing the use of a qualified interpreters who do not meet the requirements of §3.0 may increase access to extra curricular activities for students who are Deaf and Hard of Hearing.

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

Sincerely



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



Loretta Sarro, Chairperson
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