



STATE OF DELAWARE  
STATE COUNCIL FOR PERSONS WITH DISABILITIES  
MARGARET M. O'NEILL BUILDING  
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June 1, 2011

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

RE: 14 DE Reg. 1226 [DOE Final Resident Advisor Regulation]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) and Council on Deaf and Hard of Hearing Equality (CODHHE) have reviewed the Department of Education's (DOE's) final regulation regarding its *Credentials for Resident Advisor in the Statewide Programs for Autism and the Deaf and Hard of Hearing* regulation. The final regulation was published as 14 DE Reg. 1226 in the May 1, 2011 issue of the Register of Regulations. SCPD and CODHHE commented on the proposed version of this regulation in the attached March 30, 2011. The Councils have the following observations.

First, the Councils identified a "major deficiency" in the regulation, i.e., the absence of any training/skills criteria to qualify for a permit. Anyone with a "Bachelor's degree in any field from a regionally accredited college or university" (e.g. art/history; geology) qualifies for a permit. There is no requirement that resident advisors at Sterck have sign-language skills. Despite the prominence of the objection to this aspect of the regulation, the DOE does not address the commentary in the "Summary of the Evidence and Information Submitted" section. This ostensibly violates Title 29 Del.C. §10118(b)(1)(2). The Councils are still concerned with this issue and request the rationale for ignoring the commentary regarding the meager credentials for resident advisors.

Second, the Councils identified inconsistencies in the capitalization of the word "permit". The DOE corrected two (2) references to achieve consistency. However, it did not change one reference to "permit holder" in §7.1.

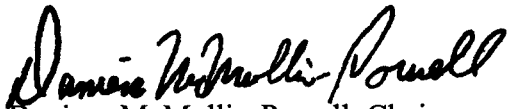
Third, the Councils recommended substitution of a single reference to "unfit" for several references in §§6.1.4 and 7.1. The changes were effected. However, the grammar in §7.1 is infirm. The Section now reads as follows:

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.

Finally, consistent with this letter, the March 30<sup>th</sup> 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 for Deaf and Hard of  
Hearing Equality

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.  
Ms. Della Thomas  
Council on Deaf and 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. 851 [DOE Proposed Resident Advisor 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 Resident Advisor in the Statewide Programs for Autism and the Deaf and Hard of Hearing* regulation. The regulation was published as 14 DE Reg. 851 in the March 1, 2011 issue of the Register of Regulations. The Councils have the following observations.

First, the regulation authorizes issuance of a permit to serve as a resident advisor in the Statewide Program for the Deaf/Hard of Hearing to persons with no ASL capability or special communication skills. The Deaf or Hard of Hearing Child's Bill of Rights Act contemplates the "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." See Title 14 Del.C. §3112(c)(4). The Act also envisions the provision of "adult models of the child's communication mode or language." See Title 14 Del.C. §3112(c)(3). This is ostensibly a major deficiency in the regulation. Section 504 contemplates the provision of qualified personnel. See, e.g., Region IX LOF to Montebello (CA) School District, 20 IDELR 388, 390-391 (May 28, 1993) [prevalent use of substitute teachers without special education training violates §504 and ADA]. Likewise, the IDEA requires the DOE to adopt standards requiring personnel with appropriate training and skills:

The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that these personnel have the content knowledge and skills to serve children with disabilities.

34 C.F.R. §300.156.

Parenthetically, the absence of any training or skill standard for residential DAP staff should also be reassessed. See, e.g., the attached August 16 and August 23, 2010 News Journal articles which document concerns with the operation of the DAP homes. DAP home residents present very complex and challenging behaviors requiring highly trained staff.

Second, 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”.

Third, the regulation is inconsistent in its capitalization of “permit”. Compare, e.g. §§6.1, 7.1, 7.2 (not capitalized) with §§5.0, 6.1.3, and 7.1 (capitalized). Indeed, in §7.1, the word is capitalized once and “uncapitalized” twice.

Fourth, §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.

Fifth, 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.

Sixth, §5.0 requires disclosure of criminal conviction history. SCPD endorses this provision. Consistent with the attached January 31, 2001 article, residential Sterck students are at risk if staff are not adequately screened.

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  
Council on Deaf & Hard of Hearing  
Equality

**cc: The Honorable Lillian Lowery  
Dr. Teri Quinn Gray  
Ms. Martha Toomey  
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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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