



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

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January 28, 2011

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

RE: 14 DE Reg. 604 [DOE Proposed Children with Disabilities Part 922 Regulation]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to revise its special education regulations to conform to changes made to federal regulations in 2008 and to correct minor typographical errors. The proposed regulation was published as 14 DE Reg. 604 in the January 1, 2011 issue of the Register of Regulations. The Department of Education proposes Part 922 encompasses "purposes and definitions". SCPD has included some comments on sections not earmarked for revision since the APA allows agencies to effect the following amendments informally:

- Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors
- Amendments in existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations

Title 29 Del.C. §10113(b).

Council has the following observations.

First, in §2.2.4, substitute "Correction" for "Corrections". The correct reference is Department of Correction. See Title 29 Del.C. §8901.

Second, in §3.0, there are references to "mental retardation" in the definition of "Child with a Disability", definition of "Mental Retardation", definition of "Multiple Disabilities", and definition of "Specific Learning Disability". The corresponding federal regulation [34 C.F.R. 300.8] still uses the term "mental retardation". The pending

“needs-based funding legislation (H.B. No. 1) uses the term “mental disability” in lieu of the term “mental retardation” at Section 41. Moreover, other DOE regulations use the term “mental disability”. See, e.g., 14 DE Admin Code 928, §3.2.3 and 3.3.1; and 14 DE Admin Code 925, §6.12. At a minimum, the DOE may wish to consider adding an italicized sentence or note to the end of the definition of “mental retardation” as follows: “The terms ‘mental disability’ or ‘intellectual disability’ are sometimes used as substitutes for the term “mental retardation” and shall be considered equivalent terms for purposes of this regulation.” Given the use of the term “mental disability” in the 925 and 928 regulations, the DOE could also consider inserting a discrete definition of the term. Finally, the preferred and acceptable terminology is “intellectual disability”; therefore, SCPD recommends that the DOE generally revamp the language to reflect this more progressive terminology.

Third, in §3.0, there are definitions of “Deafness” and Hearing Impairment”. However, the term “hard of hearing” is used in §3.0, definition of “Interpreting Services”. It is also used in Title 14 Del.C. §§3112 and 1331(c) as well as 14 DE Admin Code 1574 (Teacher of Students Who Are Deaf or Hard of Hearing). At a January 5 meeting involving the DOE’s special education director and counsel, consensus was reached on using the term “hard of hearing” in the context of a proposed regulation covering interpreter/tutors. The DOE should therefore consider adding an italicized sentence or note to the end of the definition of “hearing impairment” as follows: “The term ‘hard of hearing’ is sometimes used as a substitute for the term ‘hearing impairment’ and shall be considered an equivalent term for purposes of this regulation.”

Fourth, in §3.0, definition of “Core Academic Subjects”, the DOE should consider substituting “world languages” for “foreign languages”. See 14 DE Reg. 555 (12/1/10).

Fifth, in §3.0, the definition of “Free Appropriate Public Education” does not include State-law enhancements in Title 14 Del. §3101 amended in 2010 by H.B. 328. This is a major omission. They should be incorporated into the regulation.

Sixth, in §3.0, the definition of “Services Plan” is difficult to follow and could benefit from a review of grammar.

Seventh, in §3.0, the definition of “Consent” omits the FERPA requirements of dating and recitation of purpose of disclosure for consent to disclosure of records. Compare 34 C.F.R. §99.30.

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

Sincerely,

A handwritten signature in black ink that reads "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
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