



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. 610 [DOE Proposed Children with Disabilities Part 926 Regulation]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposes to amend its special education regulation covering procedural safeguards published as 14 DE Reg. 610 in the January 1, 2011 issue of the Register of Regulations. Council has the following observations.

First, §3.1.3 shortens the time period for providing notice to a parent of a disciplinary removal constituting a change in placement from 3 school days before the public agency proposes to change the child's placement to 3 school days before the change in placement. The relevant federal regulation [34 C.F.R. 300.530(h)] contemplates provision of notice to the parent when the decision is made to make a removal. This equates more closely to the "proposal" date. Moreover, both the existing and proposed timeframes are ostensibly inconsistent with the "reasonable time" benchmark in 34 C.F.R. 300.503 and Title 14 Del.C. §3133. As a practical matter, if a school mails a notice to a parent, it could easily take a few days simply to reach the parent. In computing time, the court systems anticipate that mailing takes at least 3 days:

Additional time after service by mail. - Whenever a party has the right to or is required to do some act or take some proceeding within a prescribed period after being served and service is by mail, 3 days shall be added to the prescribed period.

Superior Court Civil Rule 6(e). If a child is to be excluded from his home school, the parent needs time to react (e.g. provide employer notice of need for vacation; consult attorney).

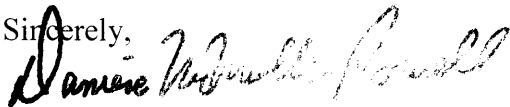
Second, in §11.0, it would be preferable to at least cross reference the new requirements in Title 14 Del.C. §3110(d) mandated by H.B. 387. The DOE issued a pre-publication draft implementing regulation on December 21. The same observation applies to §16.0. A district cannot file a civil action under this section without an affirmative vote of the local board.

Third, §12.1.1 is not very instructive. It would be preferable to include a note or other reference to the Delaware Supreme Court's Arons decision. Otherwise, the "cryptic" reference to "determined by State law" provides parents with no guidance even though the Delaware law is clear.

Fourth, in §30.2, some words are missing at the end. SCPD believes the reference should be to "...change of placement pursuant to 36.0".

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,



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.
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Mr. Charlie Michels
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Developmental Disabilities Council
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