



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. 612 [DOE Proposed Children with Disabilities Part 927 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 in the context of monitoring, enforcement, and confidentiality of information. The proposed regulation was published as 14 DE Reg. 612 in the January 1, 2011 issue of the Register of Regulations. SCPD has five (5) observations compiled below. Parenthetically, although the recommendations address specific sections that may not be earmarked in the regulation for revision, the DOE may adopt revisions pursuant to either of the following APA exemptions:

- Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors; or
- 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).

First, in §§4.1.2, 4.1.3, and 4.2.2.3, the reference to "sub grants" or sub grant" should be "subgrants" or subgrant". See 34 C.F.R. §§300.228 and 300.705.

Second, at the end of §13.0, the "Authority" section should be amended to include a reference to 14 Del.C. §3130.

Third, §17.1 could be improved to more closely align with the enabling statute. Title 14 Del.C. §3130(b) recites as follows:

(b) The parents shall have the right to obtain copies of all records, except the actual evaluation or examination instrument, described in subsection (a) of this section either without charge, or, at the discretion of the district or state agency, at a fee not to exceed actual cost. Under no circumstances shall a fee be assessed which effectively prevents parents from exercising their right to inspect, review and copy records.

This statute does not create a presumption or norm of charging parents a fee for records. In contrast, the regulation creates such a presumption or norm. The regulation literally does not authorize an agency to provide records at no charge unless the charge would effectively prevent parents from exercising their right to inspect, review and copy records.

17.1. Each participating agency may charge a fee for copies of records that are made for parents under these regulations if the fee does not exceed the actual cost of the records, or effectively prevent the parents from exercising their right to inspect, review, and copy the records.

SCPD recommends that the following be substituted to conform to the statute:

17.1. Each participating agency may either provide copies of records without charge or subject to a fee not to exceed actual costs. Under no circumstances shall a fee be assessed which effectively prevents parents from exercising their right to inspect, review and copy records.

Fourth, although §22.1 refers to “FERPA at 34 CFR part 99”, it would be preferable to include a reference to the FERPA regulation in the “Authority” section at the end of §22.0.

Fifth, the FERPA regulation requires the parental consent contemplated in §22.0 to be signed and dated, specify the records to be disclosed, state the purpose of disclosure, and identify to whom disclosure can be made. 34 C.F.R. 99.30. Section 22.0 omits these provisions and there is no definition of “parental consent” in the regulation. Parenthetically, the definition of “consent” in Regulation 922 is incomplete since it does not require dating of the consent nor recitation of the purpose of disclosure. The DOE should consider including a clarifying amendment to conform to the FERPA regulation.

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.  
Mr. John Hindman, Esq.  
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