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

May 25, 2016

Ms. Tina Shockley, Education Associate
Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

RE: 19 DE Reg. 969 [DOE Revised Proposed IEP Regulation (5/1/16)]

Dear Ms. Shockley:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) revised proposal to amend its IEP standards. DOE issued an initial proposed regulation amending its IEP standards in February 2016. SCPD commented on that initiative on February 22, 2016. Instead of issuing a final regulation, the DOE is now publishing a revised proposed regulation which covers additional standards and was published as 19 DE Reg. 969 in the May 1, 2016 issue of the Register of Regulations. SCPD has the following observations on the latest proposal.

First, the DOE incorporates edits verbatim based on the "First" and "Third" recommendations in the SCPD's February 22 letter. Council appreciates that DOE considered its recommendations.

Second, in its February 22 letter, the SCPD identified a "disconnect" between §22.2.3 and State statute, 14 Del.C. §3134(1). The DOE permits "offering" (but not automatically providing) a copy of procedural safeguards at the conclusion of an IEP meeting. The statute contemplates provision of the procedural safeguards with the notice (§3134(1). The DOE views a "notice of meeting" as not covered by §3134(1). At 969. This makes little sense. Even if arguably permitted under federal law, State law can exceed minimum federal standards. Consider the following:

A. Section 3134(8) contemplates a norm of schools providing a copy of the proposed IEP with the notice. This ostensibly represents a proposal to change a student's FAPE and Section 3133 therefore requires issuance of a §3134-compliant notice, i.e., one which includes "a full explanation of all of the procedural safeguards available to the parents under state and federal law and regulations."

B. If the compliant notice is not provided prior to the meeting, the parent will not be aware of sources of legal and other assistance (e.g. DLP; PIC) [§3134(6)]; recent test and

evaluation results [§3134(3)]; and other factors underlying the proposed changes to the IEP [§3134(4)].

C. Providing information about rights at the conclusion of an IEP meeting, rather than prior to the meeting, undermines effective parental participation. It is inherently a dysfunctional approach to promoting informed parental participation in the meeting.

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

cc: The Honorable Matthew Denn
The Honorable Steven Godowsky, Ed.D, Secretary of Education
Mr. Chris Kenton, Professional Standards Board
Dr. Teri Quinn Gray, State Board of Education
Ms. Mary Ann Mieczkowski, Department of Education
Ms. Laura Makransky, Esq., Department of Justice
Ms. Terry Hickey, Esq., Department of Justice
Ms. Valerie Dunkle, Esq., Department of Justice
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

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