



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: April 30, 2018

TO: Kelly McDowell
Division of Family Services – Office of Child Care Licensing

FROM: Jamie Wolfe, ^{Chairperson} Chairperson
State Council for Persons with Disabilities

RE: 21 DE Reg. 790 [DFS Proposed Delacare for Early Care and School-Age Center
(4/1/18)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Services for Children, Youth and Their Families/Division of Family Services (DFS)/Office of Child Care Licensing's (OCCL) proposed regulation that simplifies language, addresses environmental requirements, and elaborates on background checks, among other issues. The proposed regulation was published as 21 DE Reg. 790 in the April 1, 2018 issue of the Register of Regulations.

The important change is added language in Section 57.0 related to the Administration of Medication. Section 57.1 requires a provider to have a staff with the proper Certification on site at all times when a child who may need medication is present. Section 57.7 indicates that if a child requires administration of non-intravenous medication or any other medical care that is not part of the Administration of Medication Guide that family can request through a form a "Medical Accommodation." Families are obligated to provide medical documentation from the treating physician. The provider has five days to process a completed request. The regulation also allows for the self-administration of medication by older children. The inclusion of a reasonable accommodation policy for medical issues outside of standard medication administration will prove beneficial to children with disabilities.

The other relevant language is in 62.2 that states that the provider is obligated to consult with a child's guardian and professionals, if necessary, to develop a plan to correct unacceptable behavior for any child. This obligation is not restricted to children with disabilities. The regulation eliminates existing language that requires the center to "adapt behavior management practices for a child with a special need," although Section 63.3.4 appears to require that these adaptations be made.

A concern is that providers need to be aware that some behavioral issues are manifestations of disability, whether they are “unacceptable” in the view of some, or not. This language is crucial in trying to avoid expulsions of young children with behavioral challenges from child care centers. Suspensions and expulsions are disruptive to families and children alike, and undermine the self-esteem of children, which can lead to a pattern of failure.¹

Finally, the 63.3.4 revisions simply reword requirements that existing providers are obligated to adapt interactions, strategies, activities, materials and equipment that are described in IEPs, IFSPs, and Section 504 plans, and to allow services to be provided to a child on site.

The SCPD is endorsing changes related to the creation of a Medical Reasonable Accommodation Process, and but we are asking for clarification that providers continue to be obligated to adapt behavioral strategies and management practices to address the needs of children with disabilities.

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

cc: Ms. Trenee Parker, DFS
Ms. Laura Waterland, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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¹ <https://www2.ed.gov/policy/gen/guid/school-discipline/policy-statement-ece-expulsions-suspensions.pdf>