



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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Dover, Delaware 19901
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The Honorable John Carney
Governor

John McNeal
SCPD Director

April 29, 2022

The Honorable Mark A. Holodick
Department of Education
Office of the Secretary
Attn: Regulation Review
401 Federal Street, Suite 2
Dover, Delaware 19901

RE: Proposed Amendments to 14 DE Admin. Code 933 DELACARE:
Regulations for Early Care and Education and School-Age Care, 25 Del.
Register of Regulations 910 (April 1, 2022)

The State Council for Persons with Disabilities (SCPD) has reviewed the Delaware Department of Education's ("DDOE") proposed amendments to 14 DE Admin. Code 933 DELACARE: Regulations for Early Care and Education and School-Age Care. The proposed amendments were published as 25 DE Reg. 910 in April 1, 2022, issue of the Register of Regulations. SCPD endorses the proposed amendments (with one recommendation regarding training – see comments below) and has the following observations.

The proposed amendments may impact children with disabilities in the following contexts:

- “Allowing for OCCL to investigate complaints typically investigated by other entities if the complaint involves a violation of OCCL's regulations”;
- “Adding the approved training topic of disability non-discrimination, accommodations, or modifications”;
- “Requiring when enrolling a child to inquire if the child has an IFSP or IEP and to discuss with a parent or guardian and service providers as applicable,

any reasonable accommodations or modifications needed by a child with a disability to access the program or services”;

- “Requiring a licensee to allow services to be provided at the center for a child with disabilities, including services through an IEP or IFSP and at the request of a parent or guardian, a licensee shall permit qualified professionals to complete an observation or assessment of the child while at the center”;
- “Beginning July 1, 2023, requiring a licensee to ensure for children who have not begun kindergarten, the child's parent or guardian completes the Department's approved developmental and social emotional screening tool upon within 45 days of enrollment and annually”;
 - “Requiring a licensee to ensure that for children younger than kindergarten and initially enrolled in childcare before July 1, 2023, the child's parent or guardian completes the Department's approved developmental and social emotional screening tool by December 31, 2023.”
 - “Allowing the licensee or staff member may assist the parent or guardian in completing the screening or, if necessary, complete the assessment”;
 - “Exempting children with current IFSPs or IEPs from being screened.”

Additionally, the Department of Education proposes the following amendments related to medication usage and safety, which may disproportionately impact children with disabilities:

- “Requiring notification to OCCL within one business day of accidental ingestion of a medication or drug, when the center is informed the child required medical or dental treatment other than any first aid provided at the center”;
- “Aligning the regulations and study guide on what is considered a medication error. Medication errors include giving the wrong medication, giving the wrong dose, failing to give the medication at the correct time or at all, giving medication to the wrong child, giving the medication by the wrong route, or giving medication without documenting the administration”;
- “Requiring all staff, substitutes, and volunteers working at least 5 days or 40 hours per year to complete OCCL's approved Health and Safety Training for Child Care Professionals as part of the orientation to comply with the Child Care and Development Block Grant, rather than permitting the EC administrator to devise that training”;

- “Requiring an owner who works on site at least 7 hours per week and provides direct care to have an administration of medication certificate on file.”

In general, these proposed recommendations support day care accessibility and accountability for children with disabilities and their families.

The proposal to “[a]llow for OCCL to investigate complaints typically investigated by other entities if the complaint involves a violation of OCCL's regulations” is particularly beneficial to families who have experienced disability discrimination in daycare settings. The Division of Human Relations (DHR) has historically denied having jurisdiction over cases related to disability accommodations (although proposed legislation would clarify this issue, see: <https://legis.delaware.gov/BillDetail/79173>). Additionally, USDOJ does not investigate every reported case of disability discrimination. Families who experienced disability discrimination at daycare centers were left without recourse, even if the daycare center had violated an OCCL regulation in addition to other anti-discrimination laws or policies. This proposed amendment to OCCL regulations would provide families with a practical resource if faced with discrimination and could help hold non-compliant daycares accountable.

The proposed amendment requiring daycares to “inquire if the child has an IFSP or IEP and to discuss... any reasonable accommodations or modifications” may assist families and daycare centers in identifying and providing reasonable accommodations. SCPD recommends that at least initial disability-related training be mandatory, particularly in light of the requirement that daycares must inquire about and discuss accommodations and modifications.

The amendments about IFSP/IEP service provision and special education screening would help identify children earlier who many need services and would improve access to those services.

The remaining amendments about drug/medication error and medication/ safety training would likely improve child safety and accountability when accidents occur.

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

Sincerely,



Terri Hancharick, Chairperson
State Council for Persons with Disabilities

cc: The Honorable Susan Bunting, Department of Education
Mary Ann Mieczkowski, Department of Education
Linnea Bradshaw - Executive Director of the PSB
Tracy Poitras - PSB
Kathleen Smith - Professional Standards Board
Laura Makransky, Esq. - Department of Justice
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Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

25 DE Reg. 910 DELACARE School Care 4-29-22