



STATE OF DELAWARE  
**STATE COUNCIL FOR PERSONS WITH DISABILITIES**  
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The Honorable John Carney,  
Governor

John McNeal, Director  
SCPD

**MEMORANDUM**

DATE: January 31, 2024

TO: Delaware Department of Education  
Office of the Secretary/Attn: Regulation Review

FROM: Benjamin Shrader, Chairperson   
State Council for Persons with Disabilities

RE: Proposed DOE Amendment Regulations [Children with Disabilities Subpart A,  
Purposes and Definitions (January 1, 2024)]

The State Council for Persons with Disabilities (SCPD) has reviewed the proposed changes to the Delaware Department of Education's (DDOE's) 14 Del. Admin. C 922 which include the purposes and definitions for Delaware's special education regulations (Delaware's equivalent to the federal Individuals with Disabilities Education {IDEA}, 20 U.S.C. 1400, et seq.). The proposed changes are intended to clarify changes made earlier with DE Admin C 923 and 925.

SCPD has reviewed the changes and has the following comments and recommendations:

- DOE seeks to add the term "homebound or hospital placement". SCPD finds this change problematic because IDEA was enacted to combat the perception (and reality) that youth with disabilities were either completely excluded from schools or were languishing inside regular classrooms. IDEA mandates that students with disabilities be educated in the least restrictive environment. That is to say, students with disabilities **must** be educated with students who are not disabled, to the maximum extent appropriate and that removal from this inclusive setting only occur where the "nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 34 C.F.R. § 300.114(a)(2).
- DOE uses "**supportive instruction**" and "**homebound instruction**" interchangeably. Despite this proposed definition including a clarification that it is "distinct from

supportive instruction . . . as defined in 14 DE Admin. Code 930”, the title of section 930 is “Supportive Instruction (Homebound)”. To clarify, IDEA does not include “homebound” instruction as an LRE placement. Instead, IDEA uses the term “home instruction.” *See* 34 C.F.R. § 300.115(b)(1). Second, by explicitly including behavior as a possible reason for this placement, DOE is condoning a practice that it should be prohibiting. This is one of, if not, the most restrictive placement option available and it should be reserved for those students whose physical or mental health prevents them from otherwise being in a classroom setting or environment. This setting should not be available for districts to use as a method to exclude students with behavioral challenges – a method districts already overuse for this specific purpose.

- DOE proposes to amend the definition of Individualized Education Program to add the language “in a meeting” to explicitly state that this document is the result of a meeting. This is inconsistent with the rights in 14 Del. Admin. C. § 925.11.4, which allows for revisions to happen without a meeting.
- DDOE proposes to add the term “Individualized Family Service Plan” which it has defined as: a written plan for providing early intervention services to eligible children and their families that is:
  - A. Based on the evaluation and assessment;
  - B. Implemented with the informed written parental consent for any new service, update, refusal, or removal of a service or goal;
  - C. Developed in accordance with IDEA, Part C, and its implementing regulations at 34 CFR: 1. §303.342 - Procedures for IFSP development, review, and evaluation; 2. §303.343 - IFSP Team meeting and periodic review; and 3. §303.344 - Content of the IFSP.
  - D. Includes early intervention services that are implemented as soon as possible, but no later than 30 days from the date informed written parental consent is obtained for each of the early intervention services in the IFSP.
- DOE proposes to add a definition for print disability which it has defined as “a child who is identified with a disability and receiving special education services who requires instructional materials in accessible format.” This is not a unique disability classification as referred to under 14 DE Admin. Code 925, subsections 6.6 through 6.17.

SCPD has the following recommendations concerning these proposed changes:

- **SCPD recommends DOE remove the proposed term and definition “Homebound or hospital placement” and urges the Department to more explicitly delineate and separate home instruction (under the IDEA) and supportive instruction. Further,**

**we encourage DOE to research sister states' separation of these two similar but markedly different, educational options.** (See e.g. PA Basic Education Curricular, *Instruction Conducted in the Home*, issued September 1, 1997 and reviewed June 2018.<sup>1</sup>

- **Further, SCPD recommends DOE remove the proposed language insertion to the existing definition of Individualized Education Program, and would respectfully inquire why DOE needs the additional language, “in a meeting?”**
- **SCPD would also recommend DOE make the definition of “Individualized Family Service Plan” consistent with the structure and language of IDEA.**
- **SCPD would also recommend DOE include reference to § 303.345 (concerning interim IFSPs), consistent with the definition in IDEA, to the Individualized Family Service Plan definition.**
- Finally, with respect to the definition of “print disability,” the **SCPD would ask why DOE finds it necessary to include this definition?** But as it is included, **SCPD recommends the definition instead be “child with a print disability”** defined using the criteria for the Accessible Instructional Material program, located at <https://www.aimdelaware.org/wp-content/uploads/2023/01/AIM-Student-Eligibility-Verification-Form-1-20-23.pdf> (Student who: 1) is blind; 2) has a visual impairment or perceptual or reading disability that cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or 3) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading).

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.

cc:

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<sup>1</sup> <https://www.education.pa.gov/Policy-Funding/BECS/FederalCode/Pages/InstructionConductedHome.aspx#:~:text=Homebound%20Instruction%20is%20described%20in,but%20the%20term%20'urgent%20reasons'>