



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

John McNeal
SCPD Director

MEMORANDUM

DATE: December 21, 2023

TO: **Delaware Department of Education (DDOE)**

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

RE: Proposed DDOE Regulations on 105 Residential Child Care Facilities and Day Treatment Programs, 27 Del. Register of Regulations 370 (December 1, 2023)

The State Council for Persons with Disabilities (SCPD) has again reviewed the Department of Education's proposed regulations on Residential Child Care Facilities. **SCPD acknowledges with thanks the amendments made by DOE in response to our previous concerns.** However, SCPD would like to reiterate the following comments:

- Proposed Section 5.0 mentions that officials from OCCL or other State and local agencies may interview youth as part of their authority to inspect the licensed facilities. DOE refused the proposal to notify parents when interviewing youth, indicating such notification might hinder an investigation. **SCPD again stresses the importance of making notification a requirement unless doing so would hinder an investigation.**
- Proposed Section 12.0 describes OCCL's actions when it receives a complaint from a youth or parent of a youth at a licensed facility. **SCPD again recommends DDOE include a timeframe by which a noncompliant licensed facility is required to correct the identified noncompliance.**

- Proposed 17.1.2 states that “A photo, video, or recording that reveals a child's identity shall not be used for research, fundraising, or public relations without the written consent of the child's parent or referring agency.” DOE chose not to make the recommended changes stating “there may be situations where the referring agency would need authority to provide consent.” **SCPD recommends that release without consent should be limited to these very unlikely scenarios, rather than give the agencies carte blanche to use images without consent.**
- DOE chose not to disallow use of group or collective punishment. **SCPD would like to reiterate our concern that such practice is arcane and out of favor.**
- **SCPD would urge DOE to consider further lowering the acceptable number of time-outs in a 24-hour period.**
- DOE did not amend the requirement for teachers to be qualified for a specific age group to allow for the possibility of mixed age groups in classes. **The SCPD questions the benefit of mixed-aged classes and further recommends that in facilities where ages are not mixed a teacher be certified for the age group they are actually teaching.**
- Although DDOE amended to include a requirement that a licensee provide reasons for refusal to admit a child orally, with a written explanation upon request, **SCPD would reiterate that it is reasonable for licensees to provide a written explanation in order to avoid confusion and misunderstanding.**
- The DDOE did not amend to require direct workers for Parenting Adolescents to have any specialized training, as it would be burdensome for the facility. **SCPD recommends specialized training for direct workers be required.**
- In Section 93.6 the DDOE changed the definition of what “seriously disruptive” means. **SCPD would ask for a strong qualifier to reflect the extreme circumstances when restrictive procedure is necessary (such as significant, or substantial.)**
- The DDOE did not amend 93.2.8 to add prone restraints to the list of prohibited interventions, explaining that licensees must get permission to use any restraint. This implies of course that OCCL would and could approve prone restraints, which misses the point of the Councils’ concerns. A rather large number of states prohibit prone restraints. The US Department of Education recommends that they be banned. They are banned in a number of correctional settings. Prone restraints are too dangerous to ever be utilized. Several years ago, a teenager died in a Delaware facility after a prone restraint. **SCPD reiterates that prone restraints must be clearly prohibited.**

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

cc: Ms. Marissa Band, Esquire CLASI, DLP
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council