



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

John McNeal  
SCPD Director

## MEMORANDUM

DATE: August 29, 2023

TO: Department of Education, Office of the Secretary  
Attn: Regulation Review  
401 Federal Street, Suite 2  
Dover, Delaware 19901

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 82 (August 1,  
2023)

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's proposed regulations on Residential Child Care Facilities and has the following observations:

- In May 2023, DDOE made changes to proposed regulations based on comments received from stakeholders. These changes included amending the definition of chemical restraint to match the definition used in DSCYF's "Operating Guidelines for Contracted Children and Family Programs and Services." In addition, safeguards were included in the "time-out" procedure by adding, "The events and actions of the child leading up to each "time-out" are evaluated and staff responses to those events and actions are reviewed to ensure

competency of staff to implement a “time-out” only when necessary.”

- The proposed regulations are to replace the May 2023 changes.

**The State Council for Persons with Disabilities strongly opposes the use of restraint and seclusion on persons with disabilities, including children.**

**The below comments and recommended changes to this proposed regulation should not be construed as an abandonment of this position that all individuals with disabilities should be free of restraint and seclusion.**

Our further observations include:

- The prior definition of “child” was: “A person who has not reached 18 years of age. A person in a facility or program who becomes 18 years of age while residing in the facility or participating in the program, and who has not attained the age of 25.” Under the proposed regulations, DDOE is proposing to change the definition of “child” to: “a person who has not reached the age of 18 years or a person who becomes 18 while residing in the facility or participating in the program, who has not reached the age of 22. Child also includes a person enrolled in a State public school or receiving a board extension to remain in care.” DDOE did not provide a reasoning for why it lowered the age of those covered under this definition. **The SCPD would like clarification as to why this change was made and how it reconciles with the definition of child under special education.**
- The definition of “psychotropic drug” has changed from “a drug or substance that alters the chemical balance of neurotransmitters in the central nervous system” to “a chemical substance that changes brain function and alters perception, mood, or consciousness.” Consistent with definitions of psychotropic drug in other literature, **SCPD recommends DDOE include in its definition, that a psychotropic drug is one that produces change to behaviors.**
- DDOE defines “facility” as a “residential child care facility” and then subsequently states that a “residential child care facility is a “residential facility” in proposed section 4.3. **SCPD would ask DDOE to be consistent in references to different facilities.**
- The proposed definition of physical restraint is “the non-punitive, age-appropriate, time-limited, and reasonable use of physical holding that is required to restrict the movement of a child for the purpose of preventing harm to the child or to others when the child fails to respond to other techniques.” This proposed definition fails to account for the severity of the child’s actions and whether there is a *serious and imminent* risk of bodily harm to self or others, which is the language currently used in Delaware when referring to physical restraints

occurring in school settings. **SCPD recommends DDOE align its DELACARE definition of physical restraint with that used in 14 Del. C. 4112F and 14 Del. Admin. C. 610.**

- The proposed definition of seclusion makes it seem as though it only applies to children aged six years or older; however, there is no explicit mention of seclusion not being available for youth under the age of six or why it is not used for those under the age of six. **SCPD recommends DDOE include specific language explicitly stating that seclusion is not an approved behavior technique used for children under the age of six.**
- The language in proposed section 4.3 states that a psychiatric hospital is not considered a residential facility. **SCPD would ask DDOE for an explanation as to why it is not a residential facility, what is it, especially considering students who experience long-term stays at psychiatric hospitals?**
- 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. However, there is no mention of whether OCCL or the licensed facility must notify parents or the referring agency when such interviews are taking place. **SCPD recommends DDOE include a requirement for notification.**
- 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 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.” It is unclear why the referring agency would (or should) have the authority to consent to the releasing of a young person’s identity in such a public manner. **Therefore, SCPD recommends DDOE remove “referring agency” from this section.**
- Proposed 17.1.8.7 states that a licensee is prohibited from “[p]unishing the group for misbehaviors of a child or a group of children unless the policies and procedures clearly list the specific circumstances and safeguards when this would be allowed.” This form of discipline, known as “collective punishment,” is “fundamentally at odds with the theories of individual responsibility in western, liberal societies.”<sup>1</sup> **SCPD recommends DDOE remove this proposed section in its entirety.**
- There is a typo in proposed 17.1.9.3 – this should be “self-control” and it currently says “self-contro,”.

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<sup>1</sup> <https://theconversation.com/group-punishment-doesnt-fix-behaviour-it-just-makes-kids-hate-school-120219>.

- Proposed 17.1.10.8 provides additional requirements for reporting and addressing situations where a child is in time-out more than fifteen times in a 24-hour period. This number should be far less, and **SCPD recommends these requirements and actions kick in when a young person has been in time-out for more than five times in a 24-hour period.**
- Proposed Section 25.6 states that “[w]hen a licensee declines to admit a child, a licensee shall provide the child's parent or the referring agency with a written explanation of the reasons for refusal, if requested.” It should not be a burden of the parent to request an explanation for why a licensee refused to admit the young person. Therefore, **SCPD recommends removal of the words “if requested”.** **This would ensure that every time a licensee declines to admit a young person, it is required to provide a written explanation for why.**
- Proposed Section 29.0 describes the certification requirements for teachers in a licensed facility which is providing in-facility education services. The current language requires only that the teacher be certified for the age range of youth to whom the facility is licensed to provide services. It is not specific to the youth the teacher is educating. Therefore, there may be a situation where a licensee is providing services to youth aged 6-13 and it employs an elementary certified teacher to provide education. It would not be appropriate for that teacher to provide education to youth who are middle-school aged. Therefore, **SCPD recommends the certification requirement relate to the age of the youth the teacher is teaching rather than to the age of the youth to whom the licensee is providing services.**
- Current proposed 49.5.12 states that “A written schedule of monthly planned recreation, physical exercise, and leisure time activities be posted in a noticeable location on the premises and be maintained on file for at least 90 days.” **SCPD recommends DDOE include language that this written schedule also be provided directly to the parent or referring agency as well.**
- Proposed Section 49.8 states that “A licensee shall have and follow written policies and procedures governing preventative, routine, and emergency dental and medical care, including provisions for effective coordination of such dental and medical care with those responsible for the child's aftercare.” Although it lists a number of requirements for these written policies and procedures, it does not include any notification to the parent or referring agency. Therefore, **SCPD recommends DDOE include an additional requirement that the licensee notify and receive consent from the parent or referring agency to any dental or medical procedure.**
- Proposed Section 52.8 states that “A licensee shall make provisions with the referring agency for a child to receive any needed eyeglasses, hearing aids, prosthetic devices, or other corrective devices, as deemed medically necessary by

a licensed physician.” The current language makes this list an exhaustive one. Therefore, **SPCD recommends DDOE include language such as “including” which would make the list non-exhaustive and allow for any assistive technology or any other health-related device.**

- Proposed Sections 66.0-76.0 govern the requirements for Parenting Adolescent Facilities. The proposed regulations do not contain a requirement related to any specific qualifications for staff at these facilities outside of the general requirements included in the regulation which apply to all facilities, unless specifically exempted. Because of the special nature of this population, staff is tasked with supporting not only the parenting young person, but with the young person’s child as well. Therefore, **SPCD recommends DDOE include additional qualifications for staff employed to work at these facilities, such as training in pediatric care or early childhood education.**
- Proposed Section 93.0 governs the use of restrictive procedures, such as physical and chemical restraints and seclusion. Proposed 93.2 requires that licensees have and follow written policies and procedures related to the use of restrictive procedures. Proposed 93.2.2 states that these restrictive procedures are to be permitted only where (1) A trauma-informed treatment model is used; (2) The child is a danger to self or others; (3) The child's behavior is seriously disruptive; (4) Other ways to manage the child's dangerous behavior have failed; and (5) Staff members administering a restrictive procedure were trained to administer that procedure. **SPCD would ask DDOE to explain what it means by “seriously disruptive” because neither word is defined anywhere in the regulations and whether something is disruptive (or seriously disruptive, or mildly disruptive) is an exceptionally subjective determination. Further, SPCD recommends DDOE add the additional missing requirements to the use of physical restraint as provided in 14 Del. Admin. C. 610.**
- Proposed Section 93.2.8 would prohibit several aversive punishment procedures. **SPCD recommends DDOE include the use of prone restraint to this list of prohibited procedures.**
- Proposed Section 93.2.17 requires that the licensee’s policies or procedures include a requirement that “a physical restraint [is] to be applied for the minimum time necessary to accomplish the purpose. It shall not exceed 10 minutes without documentation on attempts made to release the child from the hold if more than 10 minutes is required. A licensee shall ensure a child is released from a physical restraint as soon as the child gains control, or before 10 minutes have elapsed, whichever occurs first[.]” 14 Del Admin. C. 610 contains additional requirements for when physical restraints must be ended. **SPCD recommends DDOE include those requirements here as well.**

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