



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

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February 25, 2010

Ms. Susan K. Haberstroh
Education Associate
Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

RE: 13 DE Reg. 985 [DOE Proposed School Based Intervention Services Regulation]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to amend its School Based Intervention Services regulation published as 13 DE Reg. 985 in the February 1, 2010 issue of the Register of Regulations. SCPD commented on an earlier proposed version of this regulation in November 2009. See attached November 20, 2009 letter for facilitated reference. In a nutshell, the Council shared 4 recommendations. The revised regulation accurately incorporates edits suggested by SCPD in one of the four contexts. Specifically, conforming references to Section 504-identified students are added in Sections 3.0 and 4.3. SCPD certainly appreciates that DOE included this recommendation in the revised proposed regulation. Council still has the following observations consistent with its commentary included in the November 2009 correspondence.

First, §1.0 literally bars districts from providing school based intervention services to any student who is "eligible" for placement in an alternative school pursuant to 14 DE Admin Code 611. The latter regulation characterizes any student "who seriously violates the district discipline code" as eligible for alternative school placement. As SCPD noted in their 2004 commentary, this "bar" to school-based intervention services should be stricken. In its 2005 response, the DOE opined that imposition of such a bar was not its intent but it declined to amend the regulation imposing the categorical bar:

In response to the concern about students who are eligible for CDAP services being excluded from eligibility for school based services the Department offers the following response. Proposed regulation 609 requires that the districts provide services to disruptive students who are not eligible for placement in consortia discipline alternative programs (CDAP's). It does not prohibit districts from providing school based services to students who are eligible for CDAP placement.

8 DE Reg. 1008 (January 1, 2005)

Since §1.0 literally and categorically excludes any student eligible for placement in a CDAP (i.e. anyone with a serious violation of discipline code) from receiving school-based intervention services, it should be amended. Consider striking “eligible for placement” and substituting “placed”.

Second, consistent with the Council’s 2004 commentary, we objected to the characterization of “parents, guardians, or relative caregivers” as “optional invitees” to the meeting to determine placement in a school based intervention program. The DOE’s rationale for treating them as optional was outlined in a December 16, 2004 letter as follows:

Parents are optional members of school based placement teams, but mandatory members of DCAP teams. The reason is that school based placements tend to be shorter, are less disruptive to the student than out of school placement, and are often more effective when done quickly.

This is a weak rationale which unduly demeans the value of parental and caregiver input. Parental “buy-in” to the decision-making process would enhance prospects for reinforcement and success. Moreover, parents could often share perspective on student motivators and what behavioral strategies are effective with a student. There may be catalysts for student behavior of which the school is unaware (e.g. death of relative; bullying by other students; change of medication). There may be supports being provided (e.g. outside counseling) of which the school is unaware, thus obviating consultation with outside counselors and therapists. The parent, guardian, or relative caregiver should not be characterized as an “optional” participant in the program placement meeting described in §4.3.

Third, in its 2004 commentary, SCPD objected to deletion of a staffing regulation which recited that “(p)riority should be given to hiring staff who are qualified to teach special education”. SCPD recommends that this provision be included the regulation.

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

Sincerely,



Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

cc: The Honorable Lillian Lowery
Dr. Teri Quinn Gray
Ms. Martha Toomey
Ms. Paula Fontello, Esq.
Ms. Mary Cooke, Esq.
Mr. John Hindman, Esq.
Mr. Charlie Michels
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor’s Advisory Council for Exceptional Citizens



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November 20, 2009

Ms. Susan K. Haberstroh
Education Associate
Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

RE: 13 DE Reg. 570 [DOE School Based Intervention Services Regulation]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOEs) proposal to amend its regulation covering school based intervention services as part of its 5-year review process. The regulation was published as 13 DE Reg. 570 in the November 1, 2009 issue of the Register of Regulations. SCPD submitted several comments on this set of regulations in November of 2004 resulting in some amendments in 2005. See 8 DE Reg. 657 (November 1, 2004) and 8 DE Reg. 1008 (January 5, 2005). Council has the following observations since some of our previous comments remain apt.

First, §1.0 literally bars districts from providing school based intervention services to any student who is "eligible" for placement in an alternative school pursuant to 14 DE Admin Code 611. The latter regulation characterizes any student "who seriously violates the district discipline code" as eligible for alternative school placement. As SCPD noted in their 2004 commentary, this "bar" to school-based intervention services should be stricken. In its 2005 response, the DOE opined that imposition of such a bar was not its intent but it declined to amend the regulation imposing the categorical bar:

In response to the concern about students who are eligible for CDAP services being excluded from eligibility for school based services the Department offers the following response. Proposed regulation 609 requires that the districts provide services to disruptive students who are not eligible for placement in consortia discipline alternative programs (CDAP's). It does not prohibit districts from providing school based services to students who are eligible for CDAP placement.

8 DE Reg. 1008 (January 1, 2005)

Since §1.0 literally and categorically excludes any student eligible for placement in a CDAP (i.e. anyone with a serious violation of discipline code) from receiving school-based intervention services, it should be amended. Consider striking “eligible for placement” and substituting “placed”.

Second, consistent with the Council’s 2004 commentary, we objected to the characterization of “parents, guardians, or relative caregivers” as “optional invitees” to the meeting to determine placement in a school based intervention program. The DOE’s rationale for treating them as optional was outlined in a December 16, 2004 letter as follows:

Parents are optional members of school based placement teams, but mandatory members of DCAP teams. The reason is that school based placements tend to be shorter, are less disruptive to the student than out of school placement, and are often more effective when done quickly.

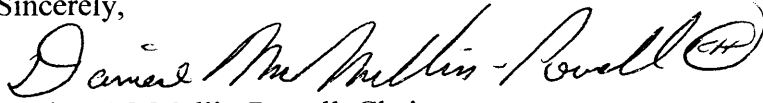
This is a weak rationale which unduly demeans the value of parental and caregiver input. Parental “buy-in” to the decision-making process would enhance prospects for reinforcement and success. Moreover, parents could often share perspective on student motivators and what behavioral strategies are effective with a student. There may be catalysts for student behavior of which the school is unaware (e.g. death of relative; bullying by other students; change of medication). There may be supports being provided (e.g. outside counseling) of which the school is unaware, thus obviating consultation with outside counselors and therapists. The parent, guardian, or relative caregiver should not be characterized as an “optional” participant in the program placement meeting described in §4.3.

Third, consistent with the Council’s 2004 commentary, the regulation contains a caveat that IDEA-based DOE regulations essentially “trump” this regulation: “Notwithstanding any of the provisions to the contrary, students with disabilities shall be served pursuant to the provisions in 14 DE Admin Code 925.” The Council recommended incorporation of a reference to students covered by Section 504 which was rejected. Section 504 regulations require changes of placement and material program supports and accommodations to be made by multidisciplinary teams which include special educators and persons knowledgeable about the child (e.g. parents). See 34 C.F.R. 104.35. The lack of guidance to districts in the regulation will predictably result in lack of compliance with the federal Section 504 regulations.

Fourth, in its 2004 commentary, SCPD objected to deletion of a staffing regulation which recited that “(p)riority should be given to hiring staff who are qualified to teach special education”. SCPD recommends that this provision be included the regulation.

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.

Sincerely,

A handwritten signature in cursive script that reads "Daniese McMullin-Powell" with a circled "CPD" to the right.

Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

cc: The Honorable Matthew P. Denn
The Honorable Lillian Lowery
Dr. Teri Quinn Gray
Ms. Martha Toomey
Ms. Paula Fontello, Esq.
Ms. Mary Cooke, Esq.
Mr. John Hindman, Esq.
Mr. Charlie Michels
Mr. Brian Hartman, Esq.
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