



STATE OF DELAWARE  
STATE COUNCIL FOR PERSONS WITH DISABILITIES  
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March 30, 2010

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

RE: 13 DE Reg. 1158 [Proposed Unit Count Regulation]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to adopt several revisions to its Unit Count regulation published as 13 DE Reg. 1158 in the March 1, 2010 issue of the Register of Regulations. The SCPD has the following observations.

First, §§1.3, 4.1.4., and 4.1.11 disallow counting of a student with a disability unless the student has an IEP in effect during the last week of school in September. There is some "tension" between this requirement and 14 DE Admin Code Part 925, §23.2 which provides schools 30 days to develop an IEP after initial identification. Thus, a student could be identified in early September, be awaiting development of an IEP, and not be counted as a student with a disability resulting in lack of qualification for federal IDEA funds. The requirement that a student have an IEP to be counted as a student with a disability also squarely conflicts with 14 Admin Code Part 925, §6.5.1, which recites as follows:

6.5.1. A child shall be entitled to receive special education and related services, and shall be eligible to be counted as a special education student for purposes of the unit funding system established under 14 Del.C. Ch. 17, when the child's team has determined that the child meets the eligibility criteria of at least one of the disability classifications in this section, and by reason thereof, needs special education and related services.

At a minimum, the DOE may wish to consider allowing newly identified students to be counted pending development of an IEP.

Second, §2.2 recites that "students with multiple disabilities shall be reported in the category that corresponds to their major eligibility category." To conform to 14 DE Admin Code Part, 925, §6.5.3, as well to conform to historical language, the DOE should consider referring to "primary disability classification" or "primary eligibility category".

Third, in §1.3, the DOE deleted the requirement that students be reported by grade level. However, §2.4 still requires reporting by grade level. The DOE may wish to consider whether an amendment is necessary to reconcile these provisions.

Fourth, §3.1.3 misstates the legal standard for “good cause” transfer of an initial year charter school student to another public school. Section 3.1.3 recites as follows:

3.1.3. Districts and Charter Schools enrolling an intra-state transfer student during the last 10 school days of September during which students are required to be in attendance shall first determine if the student is currently obligated under a choice agreement or first year charter agreement before enrolling the student. If said obligation exists, “good cause” must be agreed upon by the sending and receiving district/charter school before the receiving district/charter school can enroll the student. [emphasis supplied]

In contrast, Delaware statutory law identifies “good cause” for initial year transfer from a charter school as including several bases apart from the mutual agreement of the sending and receiving schools. See Title 14 Del.C. §506(d). An initial year charter student can withdraw from charter school “as of right” and irrespective of approval of the exiting charter school and the receiving school based on changes of residence, marital status, guardianship, etc.

Fifth, §4.1.6.2, as amended, makes no sense. It reads as follows:

4.1.6.2. Students shall the level of special education services as defined by the current IEP.

Sixth, the word “and” is duplicated in §4.1.11. It reads “(s)tudents who have been properly identified; and and have an IEP...”

Seventh, §6.2.1 disallows inclusion of students placed in distance education/twilight programs for behavioral reasons unless “currently suspended indefinitely or expelled by the district and enrolled in the district’s alternative placement program.” The reference to “indefinite suspension” is odd. Suspensions of students, particularly special education students, cannot be indefinite. See 14 DE Admin Code Part 926, §30.2. Moreover, students may be enrolled in an alternative placement program for behavioral reasons without being suspended or expelled. See Title 14 Del.C. §§1604 and 1605.

Eighth, §6.2.3 is convoluted and difficult to understand.

Ninth, SCPD recognizes that legislation was introduced in the past which required 2 unit counts since there is no disincentive for school districts maintaining students after September 30<sup>th</sup>. In addition, having 2 unit counts would have a salutary impact on dropout rates. Therefore, SCPD recommends that the Department consider promoting a change in the law to require more than one unit count per school year which will encourage school districts to retain students and reduce dropout rates.

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

Sincerely,

A handwritten signature in cursive script that reads "Daniese McMullin-Powell" with a circled "10/11" to the right.

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. Terry Hickey, 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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