



STATE OF DELAWARE  
**STATE COUNCIL FOR PERSONS WITH DISABILITIES**  
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May 28, 2010

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

RE: 13 DE Reg. 1380 [DOE Proposed FERPA Regulation]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's), proposal to adopt a regulation which contemplates that the state, local school districts and charter schools develop, adopt, and maintain policies for educational records that are consistent with the federal Family Educational Rights and Privacy Act (FERPA). The regulation was published as 13 DE Reg. 1380 in the May 1, 2010 issue of the Register of Regulations. The SCPD submitted two (2) comments on an earlier proposed version of this regulation in December 2009. The DOE has now issued a revised proposed regulation incorporating amendments prompted by the commentary.

First, SCPD noted that the DOE exemption from FERPA notice and hearing standards was overbroad, particularly in the context of students served within the Department of Correction system. The DOE regulation now applies FERPA notice and hearing standards to the DOE in the context of DOC students.

Second, SCPD recommended inclusion of a cross reference to another set of regulations addressing records of special education students. The DOE agreed with the recommendation and added a non-regulatory note.

SCPD endorses the proposed regulation with one recommendation. The references in §§3.2 and 3.3 to "notwithstanding section 3.1, and except as noted herein" are somewhat difficult to follow. The DOE could consider the following substitute provisions which provide a more specific reference to exceptions than the more obtuse "except as noted herein":

3.2. Notwithstanding Section 3.1, the Department shall not be required to annually notify parents or eligible students of their rights under FERPA or this regulation except for persons covered by Section 3.2.1 of this regulation.

3.3. Notwithstanding Section 3.1, the Department shall not be required to provide a hearing to a parent or eligible student seeking to amend their educational records as provided in Subpart C of the FERPA regulation except for persons covered by Section 3.3.1 of this regulation.

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

Sincerely,



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

cc: The Honorable Lillian Lowery  
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Ms. Martha Toomey  
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