



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

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

May 28, 2010

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

RE: 13 DE Reg. 1384 [DOE Gifted Student Early Admission to Kindergarten Reg.]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to amend its regulation addressing early admission to kindergarten for gifted students. In general, the DOE is continuing a requirement that an applicant achieve a score of at least 1.5 standard deviations above the mean on an assessment instrument for the 2010-11 school year. For the 2011-2012 school year, the DOE is requiring public schools to use more than 1 assessment instrument. The regulation was published as 13 DE Reg. 1384 in the May 1, 2010 issue of the Register of Regulations. Council has the following observations.

First, the reference to "14 Del.C. §3101(3)(a) or (b)" in Section 1.1 is incorrect. The definition of "gifted or talented person" appears at Title 14 Del.C. §3101(4).

Second, it is unclear whether an applicant for early admission for the 2011-2012 school year needs to score 1.5 standard deviations above the mean on only 1 instrument, multiple instruments, or all instruments. While Section 1.1.3 requires the public school to use multiple assessment instruments, Section 1.1.3.1 refers to achievement of a score of 1.5 standard deviations above the mean on a single instrument - "the assessment instrument". DOE intent should be clarified.

Third, the overall regulation is "at odds" with the enabling statute. The enabling statute [14 Del.C. §3101(4)] contemplates that a student can qualify as gifted and talented in as few as 1 context:

A person capable of high performance as herein defined includes one with demonstrated achievement and/or potential ability in any of the following areas, singularly or in combination:

- a. General intellectual ability;
- b. Specific academic aptitude;
- c. Creative or productive thinking;
- d. Leadership ability;
- e. Visual and performing arts ability;
- f. Psychomotor ability.

A student does not have to be globally endowed in several contexts to qualify as gifted and talented. Moreover, academic aptitude is not the sole means of qualifying. Rather, "leadership ability", "visual and performing arts ability", "psychomotor ability", etc. can qualify an applicant as gifted and talented regardless of academic aptitude. In contrast, the regulation (§§1.1.2 and 1.1.3.1) requires the score of 1.5 deviations above the mean be achieved solely on a test of "mental and cognitive abilities". In the context of charter schools, the sole emphasis on "mental and cognitive abilities" makes even less sense. If a performing arts charter school is presented with a "Shirley Temple" child with extraordinary singing and dancing ability, but who may only score at 1.25 deviations above the mean on a test of mental/cognitive ability, it makes no sense to categorically bar her early admission to the specialized school.

Fourth, the requirement of a score of 1.5 standard deviations above the mean on a test of mental and cognitive abilities may result in discrimination against students protected by Section 504 or the ADA. Some children with disabilities may not "test" well but could nonetheless qualify as "gifted" if properly assessed.

Fifth, public schools are statutorily authorized to grant early admission to kindergarten to any child "if they determine that such exception is in the best interest of the child." Title 14 Del.C. §2702(b). There is some "tension" between this broad grant of discretion to public schools and this narrow regulation's mandate that "school districts and charter schools shall comply with the following requirements" followed by very prescriptive testing standards. If the Legislature grants public schools the discretion to approve early admission to kindergarten based on "best interests", query whether the DOE can limit that discretion by categorically banning early admission unless a child scores at least 1.5 deviations above the mean on a mental/cognitive ability test.

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

Sincerely,



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

cc: The Honorable Matthew Denn
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
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