



STATE OF DELAWARE  
STATE COUNCIL FOR PERSONS WITH DISABILITIES  
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June 29, 2011

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

RE: 14 DE Reg. 1292 [DOE Proposed General Duties & Eligibility 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 regulations regarding *Children with Disabilities, General Duties and Eligibility of Agencies*. The proposed regulation was published as 14 DE Reg. 1292 in the June 1, 2011 issue of the Register of Regulations. As background, the SCPD commented on a set of Department of Education special education *General Duties & Eligibility of Agencies* regulations in January 2011. The Department of Education incorporated all of the Council's recommendations into the final regulation with the exception of recommended amendments to "age of eligibility" standards [14 DE Reg. 1057 (March 1, 2011)]. Consistent with the attached March 10, 2011 DOE letter, the DOE deferred the "age of eligibility" amendments until later:

*SCPD Comment*

*This regulation does not address children served prior to age three consistent with Title 14 Del.C. §3101(1)(2). See, e.g., §§1.2 and 24.1. There are multiple categories of children who are eligible for a FAPE at birth. See, e.g., Title 14 Del.C. §§1703(l) and 14 DE Admin Code 925, §6.6.3 (autism); Title 14 Del.C. §1703(m) and 14 DE Admin Code 925, §6.8.4 (deaf-blind); and Title 31 Del.C. §2501 and 14 DE Admin Code 925, §6.17 (blind/visual impairment). The DOE may wish to revise references to include children eligible at birth.*

*DOE Response*

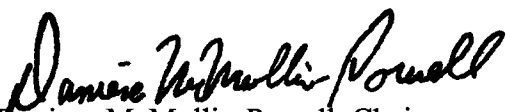
*The Department has taken the Council's comments into consideration, and agrees revision to the regulation is warranted. However, the definition regarding age of*

*eligibility in §1.2 and 24.1 were not identified for revision by the Department in the January 1<sup>st</sup> Register of Regulations. The Department agrees to pursue an amendment to the regulation in conjunction with the upcoming regulatory revisions for the needs based funding system.*

The DOE is now publishing a proposed regulation which addresses students eligible prior to age 3. SCPD endorses the proposed regulation and appreciates that DOE incorporated Council's recommendation.

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

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. 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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## DEPARTMENT OF EDUCATION

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Secretary of Education  
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March 10, 2011

Ms. Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities  
Margaret M. O'Neill Building  
410 Federal Street, Suite 1  
Dover, DE 19901

MAR 29 2011

Dear Ms. McMullin-Powell:

Thank you for your letter of January 28, 2011 concerning the following regulation:

14 DE Admin Code § 923, Children with Disabilities  
(General Duties and Eligibility of Agencies)

The following are the Council's comments requiring the Department's response:

### 1. Council Comment

The regulation does not address children served prior to age three consistent with Title 14 Del.C. §3101(1)(2). See, e.g., §§1.2 and 24.1. There are multiple categories of children who are eligible for a Free Appropriate Public Education (FAPE) at birth. See, e.g., Title 14 Del.C. §§1703(l) and 14 DE Admin Code 925, §6.6.3 (autism); Title 14 Del.C. §1703(m) and 14 DE Admin Code 925, §6.8.4 (deaf-blind); and Title 31 Del.C. §2501 and 14 DE Admin Code 925, §6.17 (blind/visual impairment). The DOE may wish to revise references to include children eligible at birth.

### DOE Response

The Department has taken the Council's comments into consideration, and agrees revision to the regulation is warranted. However, the definitions regarding age of eligibility in § 1.2 and § 24.1 were not identified for revision by the Department in the January 1<sup>st</sup> Register of Regulations. The Department agrees to pursue an amendment to the regulation in conjunction with the upcoming regulatory revisions for the needs based funding system.

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**2. Council Comment**

The terms “sub grant” in §§33.1.1 and 33.1.2 should be “subgrant”. See 34 C.F.R. §§ 300.228 and 300.705.

**DOE Response**

Sections 923.33.1.1 and 33.1.2 were not identified for revision by the Department. The Department agrees, however, to substitute “subgrant” for “subgrants” as the changes are nonsubstantive and alter grammatical form.

**3. Council Comment**

Third, in §52.1, the term “Sixty” should be “sixty”.

**DOE Response**

Section 923.52.1 was not identified for revision by the Department. The Department agrees, however, to substitute “sixty” for “Sixty” as the change is nonsubstantive and alters grammatical form.

**4. Council Comment**

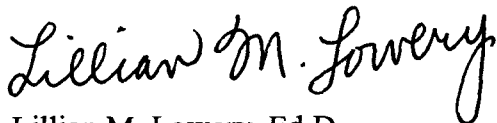
Fourth, in §68.1.11, the word “Corrections” should be “Correction”. The correct reference is Department of Correction. See Title 29 Del.C. §8901.

**DOE Response**

Section 923.68.1.11 was not identified for revision by the Department. The Department agrees, however, to substitute “Correction” for “Corrections” as the change is nonsubstantive and alters grammatical form.

The Department appreciates the Council’s time and suggestions.

Sincerely,



Lillian M. Lowery, Ed.D.  
Secretary of Education

LL:MT:JK:jp

cc: Dr. Teri Quinn Gray, President, State Board of Education  
Dr. Susan Keene Haberstroh, DOE  
Dr. Linda Rogers, DOE  
Martha Toomey, DOE  
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Paula Fontello, Deputy Attorney General  
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