



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. 1294 [DOE Proposed Evaluations, Eligibility and IEP 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 regulation regarding special education evaluations, eligibility determinations, and IEPs. The proposed regulation was published as 14 DE Reg. 1294 in the June 1, 2011 issue of the Register of Regulations. SCPD has the following observations.

A. Sections 6.4, 6.12, 9.1.4, 11.1.6, and 12.11

The DOE is proposing to substitute "intellectual disability" for "mental disability" throughout these regulations. However, the proposed references sometimes fail to adopt "people-first" language. This will contravene attached H.B. 91 standards (lines 9-19) since the legislation will most likely be in effect by the expected date of publication of a final regulation, September 1, 2011. At present, H.B. 91 has passed the House and the Senate. SCPD recommends that the following revised versions be adopted:

6.4. If, prior to the effective date...in Delaware as a student with a learning disability or mild intellectual disability ...as required by §3.0.

6.12.4. The age of eligibility for children identified under Moderate Intellectual Disability and Severe Intellectual Disability categories shall be from the third birthday Children identified under the Mild Intellectual Disability category shall be eligible from their fourth birthday

12.11. However, a child may be determined ineligible for services under the learning disability or mild intellectual disability categories where there is insufficient data...

Parenthetically, there is a recurring conflict among the regulations which should be resolved. The recently revised Title 14 Del.C. §3101(1) clarifies that a student may be eligible until the end of the school year in which the student attains age 21. This standard is reflected in DOE regulations proposed this month. See 14 DE Reg. 1292 (June 1, 2011), amending 14 DE Admin Code 923,

§1.2. In contrast, the Part 925 regulation, Part 6.0, contains many references limiting eligibility to “20 years, inclusive”. The DOE should consider adopting amendments to these sections without further publication as authorized by Title 29 Del.C. §10113(b)(5).

B. Section 6.5

It is SCPD's understanding that, based on a March 16, 2011 meeting involving DLP, GACEC, and DOE representatives, the Department agreed to clarify that IEPs may include more than one (1) disability classification. The DOE is now proposing to adopt a conforming revision to §6.5. SCPD endorses the revision.

C. Section 21.1.5

The DOE is proposing to adopt a minor corrective amendment. SCPD endorses the amendment.

D. Sections 20.2 and 22.2.3

SCPD commented on proposed revisions to the same regulation in January 2011. At that time, the Council shared several recommendations to preserve or strengthen transition planning. In the attached March 10, 2011 letter, the DOE agreed to issue revised standards at a later date. The DOE is now proposing to adopt transition standards which conform to the Council's recommendations. SCPD endorses these revisions.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position or observations 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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SPONSOR: Rep. Heffernan & Sen. McDowell
Reps. Bennett, Hudson, Q. Johnson, Keeley, Kowalko,
Lavelle, Mulrooney, Schooley, Scott, B. Short, Viola;
Sen. Sokola

HOUSE OF REPRESENTATIVES
146th GENERAL ASSEMBLY

HOUSE BILL NO. 91

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE USE OF RESPECTFUL
LANGUAGE WHEN REFERRING TO PERSONS WITH DISABILITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 6 of Title 29 of the Delaware Code by inserting a new section 608 therein to read as
2 follows:

3 “§ 608. Use of respectful language when referring to persons with disabilities.

4 (a) The Legislature recognizes that language used in reference to individuals with disabilities shapes and reflects
5 society’s attitudes toward people with disabilities. Many of the terms currently used diminish the humanity and natural
6 condition of having a disability. Certain terms are demeaning and create an invisible barrier to inclusion as equal
7 community members. The Legislature finds it necessary to clarify preferred language for new and revised laws and rules
8 by requiring the use of terminology that puts the person before the disability.

9 (b) From the effective date of this section, all new and revised statutes, administrative rules, local laws,
10 ordinances, charters or regulations promulgated or any publication published by the state or any political subdivision that
11 refers to persons with disabilities shall:

12 (1) Avoid language that:

13 (A) implies that a person as a whole is disabled, such as the “mentally ill”, “retarded” or the
14 “learning disabled”, or

15 (B) equates persons with their conditions, such as “epileptics”, “autistics”, or “quadriplegics”;

16 and

17 (2) Replace non-respectful language by referring to persons with disabilities as persons first; for example,
18 persons with disabilities, persons with developmental disabilities, persons with mental illness, persons with autism, or
19 persons with cognitive disabilities.

20 (c) Violation of this section shall not be grounds to invalidate any new or revised statutes, administrative rules,
21 local laws, ordinances, charters, or regulations promulgated or any publication published by the state or any political

22 subdivision; provided, however, such documents shall be changed to reflect the provisions of this section in subsequent
23 revisions.

24 (d) Nothing in this section shall constitute a requirement to change the name of any agency or program. Existing
25 printed material may be utilized until such time as supplies are required to be replenished.

26 (e) Nothing in this section shall be construed as changing the application of any provision affected by this section
27 to any person. This section does not apply where a reference to a particular word or phrase is required by federal law or
28 regulation or state statute.”.

SYNOPSIS

People First Language (PFL) legislation is part of a national movement to promote dignity and inclusion for people with disabilities. PFL specifies that the order of terms used to describe any individual places the person first, and the description of the person second. For example, when using PFL, outdated terms such as “the disabled” would be phrased as “people with disabilities.” This language emphasizes that individuals are *people first*, and that their disabilities are secondary.

This bill requires all new state laws and publications, from the effective date of the enactment of this bill into law, to avoid language that is disrespectful and/or offensive to individuals with disabilities. A violation of this bill is not grounds to invalidate any new state law or publication. This bill does not apply to terms required by federal law or regulation or state statute. Nothing in this section shall be construed as changing the application of any provision affected by this section to any person.

3/29/11 emailed to DMP 104



DEPARTMENT OF EDUCATION

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March 10, 2011

MAR 29 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

Dear Ms. McMullin-Powell:

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

**14 DE Admin Code § 925, Children with Disabilities
(Evaluations, Eligibility Determination, IEP)**

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

1. Council Comment

First, in §20.2 the DOE is deleting some specific provisions related to transition planning. Council has a few recommendations in this context:

- A. If DOE intends to maintain the deletion, we recommend amending the new sentence as follows: "Beginning with the earlier of the first IEP to be in effect when the child turns 14 or enters 8th grade, or younger if determined appropriate by the IEP team, and updated annually thereafter, the IEP must include:"
- B. As a practical matter, 8th grade students must decide to apply to Vo-Tech high schools very early in the school year. The following is an excerpt from the NCC Vo-Tech School District Website:

For 8th Grade Applicants:

Students are encouraged to submit completed applications to their school counselors by December 12th.

2. Council Comment

Second, in §22.2.2, Council requests that DOE consider the following substitute for the proposed provision: “For a child with a disability beginning with the earlier of the first IEP to be in effect when the child turns 14 or enters 8th grade, or younger if determined appropriate by the IEP Team”.

DOE Response

For the reasons stated in the DOE’s Response to #1 above, the Department will defer a revision to § 22.2.2 at this time, and will propose additional revisions to § 22.2.2 with the upcoming regulatory revisions for the needs based funding system.

3. Council Comment

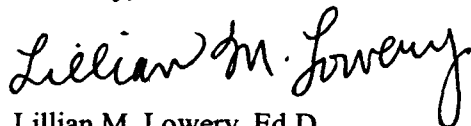
Third, in §27.3.3.2, Council recommends inserting “or advanced practice nurse’s” after “physician’s”. As a practical matter, many individuals are now primarily treated by an advanced practice nurse rather than a traditional physician. Advanced practice nurses are authorized to perform independent acts of diagnosis and prescribe drugs. See Title 24 Del.C. §1902(b)(1). State law bars health insurers from denying benefits for eligible services when provided by an advanced practice nurse instead of a physician. See Title 18 Del.C. §2318. The attached December 28, 2010 News Journal article underscores that many individuals are primarily treated by advanced practice nurses.

DOE Response

The Department has taken the Council’s comment into consideration and declines to revise the regulation as suggested. Section § 27.3.3.2 was not identified for revision by the Department in the January 1st Register of Regulations.

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
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