



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. 1297 [DOE Proposed Records Access 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 – Monitoring, Enforcement and Confidentiality of Information*. The proposed regulation was published as 14 DE Reg. 1297 in the June 1, 2011 issue of the Register of Regulations. As background, SCPD commented on a set of proposed special education *Monitoring, Enforcement and Confidentiality of Information* regulations in January 2011. The Department later adopted a final regulation incorporating some Council recommendations. However, consistent with the attached March 10, 2011 letter, the DOE deferred action on a parental access to records standard.

SCPD Comment

Fourth, §17.1 could be improved to more closely align with the enabling statute. Title 14 Del.C. §3130(b) recites as follows:

(b) The parents shall have the right to obtain copies of all records, except the actual evaluation or examination instrument, described in subsection (a) of this section either without charge, or, at the discretion of the district or state agency, at a fee not to exceed actual cost. Under no circumstances shall a fee be assessed which effectively prevents parents from exercising their right to inspect, review and copy records.

This statute does not create a presumption or norm of charging parents a fee for records. In contrast, the regulation creates such a presumption or norm. The regulation literally does not authorize an agency to provide records at no charge unless the charge would effectively prevent parents from exercising their right to inspect, review and copy records:

17.1. Each participating agency may charge a fee for copies of records that are made for parents under these regulations if the fee does not exceed the actual cost of the records, or effectively prevent the parents from exercising their right to inspect, review, and copy the records.

SCPD recommends that the following be substituted to conform to the statute:

17.1. Each participating agency may either provide copies of records without charge or subject to a fee not to exceed actual costs. Under no circumstances shall a fee be assessed which effectively prevents parents from exercising their right to inspect, review and copy records.

DOE Response

Section 17.1 was not identified for revision by the Department in the January 1st Register of Regulations. The state regulation also mirrors the federal regulation at 34 C.F.R. §300.617.

The Department agrees, however, to propose a revision to §17.1 in response to the Council's comments with the upcoming revisions to the needs based funding system.

The Department is now proposing to adopt a conforming regulation which is equivalent to the provision proffered by the Council. The final regulation would read as follows:

Each participating agency may either provide copies of records to parents under these regulations at no charge or subject to a fee not to exceed the actual cost of the records. Under no circumstances shall a fee be assessed which effectively prevents the parents from exercising their right to inspect, review and copy the records.

SCPD endorses the proposed regulation.

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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3/29/11 emailed to DM-P | BH



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 § 927, Children with Disabilities
(Monitoring, Enforcement and Confidentiality of Information)**

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

1. Council Comment

First, in §3.3.1, it states that "DOE will provide reasonable notice and an opportunity for a hearing on any determination that an LEA needs intervention..." Section 3.3.2 then states that the "hearing described in 3.3.1 will consist of an opportunity to meet with the Associate Secretary of DOE's Curriculum and Instructional Improvement Branch, or with a designee of the Secretary..." Council requests clarification on whether this meeting is open to the public.

DOE Response

To date, the Department has not ruled that an LEA needs intervention, nor has an LEA requested a hearing as outlined in § 3.3.1.

2. Council Comment

Second, in §§4.1.2, 4.1.3, and 4.2.2.3, the reference to “sub grants” or sub grant” should be “subgrants” or subgrant”. See 34 C.F.R. §§300.228 and 300.705.

DOE Response

Sections 4.1.2, 4.1.3, and 4.2.2.3 were not identified for revision by the Department in the January 1st Register of Regulations. The Department agrees, however, to substitute “subgrant” for “subgrants” as the changes are nonsubstantive and alter grammatical form.

3. Council Comment

Third, at the end of §13.0, the “Authority” section should be amended to include a reference to 14 Del.C. §3130.

DOE Response

Section 13.0 was not identified for revision by the Department in the January 1st Register of Regulations. The Department agrees, however, to revise § 13.3 as follows:

An agency may presume that the parent has authority to inspect and review records relating to his or her child as provided in these regulations and 14 Del. C. 3130 unless the agency has been advised the parent does not have the authority under applicable State laws governing such matters as guardianship, separation, and divorce.

4. Council Comment

Fourth, §17.1 could be improved to more closely align with the enabling statute. Title 14 Del.C. §3130(b) recites as follows:

(b) The parents shall have the right to obtain copies of all records, except the actual evaluation or examination instrument, described in subsection (a) of this section either without charge, or, at the discretion of the district or state agency, at a fee not to exceed actual cost. Under no circumstances shall a fee be assessed which effectively prevents parents from exercising their right to inspect, review and copy records.

This statute does not create a presumption or norm of charging parents a fee for records. In contrast, the regulation creates such a presumption or norm. The regulation literally does not authorize an agency to provide records at no charge unless the charge would effectively prevent parents from exercising their right to inspect, review and copy records.

17.1. Each participating agency may charge a fee for copies of records that are made for parents under these regulations if the fee does not exceed the actual cost of the records, or effectively prevent the parents from exercising their right to inspect, review, and copy the records.

The GACEC recommends that the following be substituted to conform to the statute:

17.1. Each participating agency may either provide copies of records without charge or subject to a fee not to exceed actual costs. Under no circumstances shall a fee be assessed which effectively prevents parents from exercising their right to inspect, review and copy records.

DOE Response

Section 17.1 was not identified for revision by the Department in the January 1st Register of Regulations. The state regulation also mirrors the federal regulation at 34 C.F.R. § 300.617.

The Department agrees, however, to propose a revision to § 17.1 in response to the Council's comments with the upcoming regulatory revisions for the needs based funding system.

5. Council Comment

Fifth, although §22.1 refers to "FERPA at 34 CFR part 99", it would be preferable to include a reference to the FERPA regulation in the "Authority" section at the end of §22.0.

DOE Response

The Department has taken the Council's comment into consideration and declines to revise the regulation as suggested. Section 22.1 was not identified for revision by the Department in the January 1st Register of Regulations. In addition, the state regulation mirrors the federal regulation at 34 C.F.R. § 300.622.

6. Council Comment

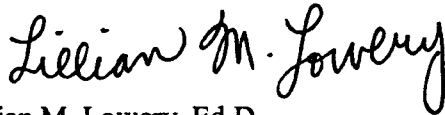
Sixth, the FERPA regulation requires the parental consent contemplated in §22.0 to be signed and dated, specify the records to be disclosed, state the purpose of disclosure, and identify to whom disclosure can be made. 34 C.F.R. 99.30. Section 22.0 omits these provisions and there is no definition of "parental consent" in the regulation. Parenthetically, the definition of "consent" in Regulation 922 is incomplete since it does not require dating of the neither consent nor recitation of the purpose of disclosure. The DOE should consider including a clarifying amendment to conform to the FERPA regulation.

DOE Response

The Department has taken the Council's comment into consideration and declines to revise the regulation as suggested. Section 22.1 was not identified for revision by the Department in the January 1st Register of Regulations. In addition, the state regulation mirrors the federal regulation at 34 C.F.R. § 300.622.

The Department appreciates the Council's time and suggestions.

Sincerely,



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

LL:MTJK.jp

cc:

Dr. Teri Quinn Gray, President, State Board of Education
Dr. Susan Keene Haberstroh, DOE
Dr. Linda Rogers, DOE
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