



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. 1299 [DOE Proposed Use & Administration of Funds 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 to conform to statutory adoption of the "needs-based" funding system pursuant to recently enacted S.B. 1. The proposed regulation was published as 14 DE Reg. 1299 in the June 1, 2011 issue of the Register of Regulations. SCPD has the following observations.

A. Section 1.3 contemplates assessment of the proper funding level solely based on the IEP. Title 14 Del.C. §1703(d)(7) recites as follows: "Counting students in preschool, basic, intensive, or complex shall be based on the Individual Education Program (IEP) and according to rules and rubrics described in the Department of Education regulations." In theory, a student could be identified as IDEA-eligible on September 30 pending development of an IEP within 30 days. 14 DE Admin Code 925, §23. The DOE may wish to consider whether §1.3 adequately addresses this situation.

B. Section 3.2.2 contains the following categorical requirement: "All paraprofessionals shall work under the supervision of teachers." This is ostensibly "overbroad". While instructional paraeducators must work under the supervision of teachers, "service paraeducators" are not required to work under the supervision of teachers. See 14 DE Admin Code 1517. SCPD assumes they could work under the supervision of a psychologist, nurse, or other personnel in the discretion of the district or charter school. Moreover, a "bus aide" is ostensibly a "paraprofessional" but not a "paraeducator" [14 DE Admin Code 1517, §2.0, Definition of "Service Paraeducator". Bus aides do not report to teachers. See 14 DE Admin Code 1105, §7.0. The DOE may wish to amend the categorical reference for accuracy.

C. Section 3.2.5 could benefit from revision of the list of professional staff. The reference to "class aides" is somewhat limiting. Consider substituting "paraeducators" to comport with 14 DE Admin Code 1517. Moreover, while speech language pathologists are listed, occupational and physical therapists are omitted. The term "specialist" is adopted in Title 14 Del.C. §1321(e)(10) to cover speech, occupational, and physical therapists. Including a reference to "nurses" would

also be appropriate. See Title 14 Del.C. §1703(d)(5)a3 and 1703(d)(6)a3. See also §3.3 of the proposed regulation.

D. Section 3.2.5.1 omits any requirement that public schools submit documentation to the DOE certifying that preschool units earned are used to provide services to children counted in those units. This is not consistent with statutory law. For example, Title 14 Del.C. §1703(d)(1)b recites as follows: “Districts must use all funds generated by preschool unit to support services for the students counted in the preschool unit.” Title 14 Del.C. §1321(e)(13) is consistent: “All earned units generated by students receiving special education services shall be used to support these students.”

E. Title 14 Del.C. §1703(d)(8) recites as follows: “At the completion of the IEP meeting, the team will discuss and review the needs based funding unit and assure in writing that adequate resources are available to implement the IEP.” This concept is entirely omitted from DOE regulations. It should be explicitly included in this regulation and/or other DOE regulations (e.g. 14 DE Admin Code 925). The designation of funding level should appear in the IEP itself. However, there is no reference in any regulation contemplating inclusion of the funding level and “assurance in writing that adequate resources are available to implement the IEP.” The DOE could consider some variation of the following standard:

Each district and charter school IEP team shall, at the completion of the IEP meeting, discuss and identify the needs based funding level, and complete an assurance statement confirming the availability of adequate resources to implement the IEP. The identification of the needs based funding level and assurance statement will be prominently included in the IEP document or IEP addendum form approved by the Department.

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 Lillian Lowery
Dr. Teri Quinn Gray
Ms. Martha Toomey
Ms. Paula Fontello, Esq.
Ms. Terry Hickey, Esq.
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