



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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February 24, 2011

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

RE: 14 DE Reg. 762 [DOE Proposed Notice to School Boards of Due Process
Proceedings Regulation]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to adopt a new regulation which relates to notification of special education due process proceedings. The proposed regulation was published as 14 DE Reg. 762 in the February 1, 2011 issue of the Register of Regulations. As background, on approximately December 21, 2010, the DOE shared a pre-publication draft regulation implementing H.B. 387. That bill requires the DOE to issue a regulation covering notice of special education proceedings to school boards and authorizing district appeals only if approved by a majority of school board members. SCPD provided the attached January 7, 2011 comments to the DOE. The Department has now formally published a revised version of the regulation for public comment. The revised regulation incorporates the "First, Second, and Fourth" SCPD suggested amendments.

SCPD endorses the revised regulation subject to two (2) considerations.

First, the DOE overlooked the recommended deletion of the final reference to "panel" at the end of §5.2.

Second, consistent with the "Third" suggested amendment, the regulation does not address the common situation in which one or more school board members may be absent from "the next scheduled school board meeting". No guidance is provided to districts on how to address this situation. SCPD continues to recommend that §4.1 be amended to read "at or before the next scheduled school board meeting".

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.
The Honorable S. Quinton Johnson
Senator David P. Sokola.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

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January 7, 2011

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

RE: DOE Draft Regulations

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) unpublished draft regulations which would implement H.B. 386 and H.B. 387. Thank you for sharing the drafts and SCPD is providing its comments in this letter.

School Board Member Training Concerning Special Education Due Process Hearings

This draft regulation implements H.B. No. 386 signed by the Governor on June 29, 2010. SCPD has the following observations and recommendations.

First, in §2.0, definition of "Trainer", the DOE may wish to add "in whole or in part" at the end of the sentence. This would permit the Department to approve multiple trainers or co-trainers (e.g. Professor Perry Irked; DAG; experienced hearing officer).

Second, in §3.1, SCPD recommends inserting "a minimum of" between "of" and "two" to provide the DOE with some flexibility. For example, the approved trainer could suggest that 2 hours is inadequate to cover the assigned topics or board members may generally request more instruction. The DOE may also wish to consider whether two hours of instruction is so minimal that it undermines the spirit of the enabling legislation.

Third, §4.0 is problematic. For example, if a board member were appointed 11 months prior to the effective date of the regulation, the member would have 1 month to comply. Moreover, there is literally no provision for training board members who initiated service more than one year prior to the effective date of the regulation. SCPD recommends revising §4.0 as follows:

Each district School Board Member shall attend the Special Education Due Process Hearing Training the later of the following: 1) within one year of election, appointment, or voluntary service to a District School Board; or 2) within one year of the effective date of this regulation.

Fourth, the enabling legislation requires the DOE regulation to include the “method” of the training. By using the word “attend” in §4.0, the implication is that in-person (as juxtaposed to on-line) training is contemplated. However, in deference to the statute, the DOE may wish to explicitly describe the training “method”.

Notice to School Boards of Due Process Proceedings

This regulation implements H.B. No. 387 signed by the Governor on June 29, 2010. SCPD has following observations and recommendations.

First, in §§4.1.2 and 6.1.2, SCPD recommends substituting “parents” for “parent”. The statute uses the term “parents”. A hearing could be requested by separated or divorced parents with separate addresses. Under the statute, both parents are entitled to receive the notices contemplated by the regulation.

Second, in §§5.1.1, 5.1.2, and 7.0, SCPD recommends deletion of the word “panel”. Section 393 of the epilogue to the FY11 budget bill (H.B. No. 290) authorizes the use of a single hearing officer to preside over some due process hearings. Moreover, there is no need to include the word “panel”. It is sufficient to refer to a “due process hearing decision”.

Third, §4.1.1 literally tracks the statute by requiring provision of a copy of a complaint to each school board member at the next scheduled school board meeting. However, there is no guidance for the common situation in which some board members are absent from the meeting. SCPD suspects that, in practice, board members are provided with board “packets” of information prior to each meeting. The DOE may wish to consider amending §4.1.1 to read “at or before the next scheduled school board meeting”. No one should complain if board members receive materials earlier rather than later and this gives districts a protocol to comply with the spirit of the statute by ensuring prompt sharing of the complaint with board members.

Fourth, in §6.1.1, SCPD recommends deletion of the term “pursuant to the IDEA”. The enabling statute is codified at Title 14 Del.C. §3110 and hearings are available to contest violations of Chapter 31 which exceed IDEA standards. For example, a parent denied the right to visit a proposed educational program in violation of Title 14 Del.C. §3130(c) could challenge the denial through a due process hearing based on a State law entitlement which exceeds IDEA standards. Moreover, there are State DOE regulations which may exceed the IDEA and serve as the basis for a due process hearing request. The term “pursuant to the IDEA” is unduly limiting and unnecessary within the context of §6.1.1.

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

Sincerely,



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

cc: The Honorable Lillian Lowery
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