



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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May 29, 2012

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

RE: 15 DE Reg. 1536 [DOE Proposed Data Governance 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 data governance regulation which was published as 15 DE Reg. 1536 in the May 1, 2012 issue of the Register of Regulations. The proposed regulation is intended to implement Title 14 Del.C. §122(b)(25) which was added to the Code upon enactment of H.B. 213 in 2011. The statute requires the Department of Education, to issue regulations in collaboration with the P-20 Council, Interagency Resource Management Committee (IRMC) and State Board of Education covering the collection, use, maintenance, disclosure and sharing of educational records and information. The regulation focuses on data for research. SCPD endorses the proposed regulation subject to consideration of the following concerns.

First, in §2.0, the definition of "educational record" is limited to agencies covered by FERPA, the IDEA and similar federal and State privacy and confidentiality laws. The DOE should consider whether this will omit some private schools. FERPA only covers schools receiving federal funds. See 34 C.F.R. 99.1. The IDEA generally covers only public schools and would not cover institutions of higher education. The definition might omit private elementary, secondary, post-secondary, and trade schools which do not receive federal funds but may be subject to DOE regulation. Cf. Title 14 Del.C. §122(b)(8) and Chapter 85.

Second, §4.3.1 would literally categorically limit a school, school district, or postsecondary institution from conducting research in contexts other than "improving instruction; developing, validating, or administering predictive tests; or administering student aid programs." This could be problematic. A school or college may wish to conduct an assessment of diversity, compliance with civil rights laws, transportation,

interest in sports teams or extracurricular activities, college housing, etc. The regulation should not be so rigid as to disallow such research.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position or comments 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. Mary Ann Mieczkowski
Ms. Paula Fontello, Esq.
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