



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: May 30, 2012

TO: All Members of the Delaware State House of Representatives

FROM: Ms. Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: S.B. 207 [Special Education "Childfind" & Hearing Panel Composition]

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. 207 with S.A. 1 which amends two statutes applicable to special education students. SCPD has the following observations.

First, the proposed legislation amends the existing "Childfind" statute. The current law already requires each district to identify, locate, and evaluate children with disabilities residing within the confines of the district. The bill adds provisions clarifying that the "Childfind" duty extends to children who are homeless, wards of the State, or are enrolled in private schools. The amendment excludes vocational school districts. The attached corresponding IDEA regulation, 34 C.F.R. 300.111, mentions the three categories of students included in S.B. NO. 207 (homeless; wards of state; attending private schools). However, the federal regulation also includes a requirement that Childfind address "highly mobile children, including migrant children." See 34 C.F.R. 300.111(c)(2). Both S.B. No. 207 and the attached DOE Childfind regulation [14 DE Admin Code 923, §11] omit any reference to the latter category of children. It would be preferable to include the category in the bill to conform more closely to the corresponding federal regulation. Since the bill has already passed the Senate, a House amendment could be added or, at minimum, the Department could commit to amending its Childfind regulation to explicitly address this category of children.

Second, the legislation amends the existing special education hearing panel statute to delete a requirement that the attorney panelist be admitted to practice in Delaware. Instead, the qualifications are changed to an "attorney admitted to practice and in good standing with the bar of a state." Based on prior discussions with DOE staff, SCPD understands that the change is intended to allow the Department to include a law school professor who is an expert in special education law as an attorney panelist. Given the low incidence of hearings, it is somewhat

difficult to develop an experienced cadre of attorney hearing officers. The proposed change provides some flexibility to allow an out-of-state attorney to serve on panels. However, in deference to the Delaware Bar, a narrower exception could have been considered instead of literally allowing general attorneys from Iowa, Nebraska, and Alaska to serve as Delaware hearing panelists. Line 15 could have adopted the following standard: “(1) One attorney either admitted to practice in the State or employed as a professor or instructor in an accredited law school with demonstrated expertise in special education law.”

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations on the proposed legislation.

cc: Mr. Brian Hartman, Esq.
Ms. Susan Haberstroh
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council
Delaware State Bar Association

Sb 207 education5-30-12

§ 300.108 Physical education.

The State must ensure that public agencies in the State comply with the following:

(a) *General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.*

(b) *Regular physical education.* Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless—

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's IEP.

(c) *Special physical education.* If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.

(d) *Education in separate facilities.* The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(5)(A))

§ 300.109 Full educational opportunity goal (FEOG).

The State must have in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(2))

§ 300.110 Program options.

The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(2), 1413(a)(1))

§ 300.111 Child find.

(a) *General.* (1) The State must have in effect policies and procedures to ensure that—

(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(b) *Use of term developmental delay.* The following provisions apply with respect to implementing the child find requirements of this section:

(1) A State that adopts a definition of *developmental delay* under § 300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (e.g., ages three through five).

(2) A State may not require an LEA to adopt and use the term *developmental delay* for any children within its jurisdiction.

(3) If an LEA uses the term *developmental delay* for children described in § 300.8(b), the LEA must conform to both the State's definition of that term and to the age range that has been adopted by the State.

(4) If a State does not adopt the term *developmental delay*, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part.

(c) *Other children in child find.* Child find also must include—

(1) Children who are suspected of being a child with a disability under § 300.8 and in need of special education, even though they are advancing from grade to grade; and

(2) Highly mobile children, including migrant children.

(d) *Construction.* Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in § 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1401(3)); 1412(a)(3))

§ 300.112 Individualized education programs (IEP).

The State must ensure that an IEP, or an IFSP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with §§ 300.320 through 300.324, except as provided in § 300.300(b)(3)(ii).

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(4))

§ 300.113 Routine checking of hearing aids and external components of surgically implanted medical devices.

(a) *Hearing aids.* Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

(b) *External components of surgically implanted medical devices.* (1) Subject to paragraph (b)(2) of this section, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.

(2) For a child with a surgically implanted medical device who is receiving special education and related services under this part, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1401(1), 1401(26)(B))

Least Restrictive Environment (LRE)**§ 300.114 LRE requirements.**

(a) *General.* (1) Except as provided in § 300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§ 300.115 through 300.120.

(2) Each public agency must ensure that—

(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and

11.0 Child Find and Identification of Eligible Individuals

11.1 General: As used in these regulations, identification has two (2) purposes: to identify those individuals who require special education; and to identify individuals who need general education interventions. Except as noted in 11.1.1 regarding parentally placed private school children, each LEA and any other public agency responsible for the education of children with disabilities shall establish and implement ongoing evaluation procedures consistent with this section to identify, locate and evaluate all children residing within the confines of the LEA or other public agency, including children with disabilities who are homeless children or are wards of the State, regardless of the severity of their disability, and who are in need of special education and related services.

11.1.1 Each LEA or other public agency shall further establish and implement ongoing evaluation procedures consistent with this section to identify, locate and evaluate children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located within the school district served by the LEA in accordance with this section and 31.0 (Child Find for Parentally Placed Private School Children with Disabilities).

11.2 Children with developmental delay: The following provisions apply with respect to implementing the child find requirements of this section:

11.3 The definition of developmental delay adopted by the State under 14 DE Admin. Code 925.6.7 applies to children aged three (3) through nine (9).

11.4 An LEA is not required to adopt and use the term developmental delay for children within its boundaries.

11.5 If an LEA uses the term developmental delay for children, the LEA shall conform to both the State's definition of that term and to the age range that has been adopted by the State (i.e., ages three (3) through nine (9)).

11.6 Other children in child find: Child find also shall include children who are suspected of being a child with a disability as defined in 14 DE Admin. Code 922.3.0 and in need of special education, even though they are advancing from grade to grade; and highly mobile children, including migrant children.

11.7 Health, hearing, vision and orthopedic screening shall be conducted as specified in 14 DE Admin. Code 815.

11.8 Rule of Construction. Nothing in these regulations requires that children be classified by their disability so long as each child who has a disability that is listed in 14 DE Admin. Code 922.3.0 (in the definition of child with a disability) and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

11.9 Problem Solving in General Education and Instructional Support Teams

11.9.1 Problem solving in general education classroom and instructional support teams: *The identification and child find procedures required in 11.0, shall include a systematic problem solving process to examine the nature and severity of an educationally related problem. These procedures shall primarily focus on variables related to developing effective educationally related interventions. Active parent participation is an integral aspect of the process and is solicited throughout. At a minimum, the process shall include:*

11.9.1.1 *Description of problem: The presenting problem or behavioral concern is described in objective, measurable terms that focus on alterable characteristics of the individual and the environment.*

The individual and environment are examined through systematic data collection. The presenting problem or behavioral concern are defined in a problem statement that describes the differences between the demands of the educational setting and the individual's performance.

11.9.1.2 *Data collection and problem analysis:* A systematic, data-based process for examining all that is known about the presenting problem or behaviors of concern is used to identify interventions that have a high likelihood of success. Data collected on the presenting problem or behaviors of concern are used to plan and monitor interventions. Data collected are relevant to the presenting problem or behaviors of concern and are collected in multiple settings using multiple sources of information and multiple data collection methods. Data collection procedures are individually tailored, valid for the concern addressed, and reliable, and allow for frequent and repeated measurement of intervention effectiveness.

11.9.1.3 *Intervention design and implementation:* Interventions are designed based on the preceding analysis, the defined problem, parent input, and professional judgments about the potential effectiveness of interventions. The interventions are described in an intervention plan that includes goals and strategies, a progress monitoring plan, a decision making plan for summarizing and analyzing progress monitoring data, and responsible parties. Interventions are implemented as developed and modified on the basis of objective data and with the agreement of the responsible parties.

11.9.1.4 *Progress monitoring:* Systematic progress monitoring is conducted which includes regular and frequent data collection, analysis of individual performance across time, and modification of interventions as frequently as necessary based on systematic progress monitoring data.

11.9.1.5 *Evaluation of intervention effects:* The effectiveness of interventions is evaluated through a systematic procedure in which patterns of individual performance are analyzed and summarized. Decisions regarding the effectiveness of interventions focus on comparisons with initial levels of performance and rate of progress toward meeting grade level expectations.

11.9.2 *The identification and child find procedures required in 11.0, shall also include procedures to establish, and to refer students to, school or program based instructional support teams. The agency's procedures shall include the following requirements:*

11.9.2.1 *The instructional support team shall include members collectively qualified to assist in the identification of instructional and behavioral intervention strategies for learning and behavioral problems and needs.*

11.9.2.2 *The instructional support team process shall ensure that a student's learning and behavioral needs are comprehensively assessed. It shall include consideration, as appropriate, of curriculum based assessment measures, analyses of instructional variables, systematic observations, functional assessments and current health information.*

11.9.2.3 *Baseline and progress monitoring data shall be collected and used to inform intervention strategies.*

11.9.2.4 *All initial referrals to the instructional support team shall be in writing. Written documentation of the instructional support team process shall be maintained for each student.*

11.9.2.5 *The instructional support team process may or may not lead to referral for initial evaluation to determine eligibility for special education services.*

11.9.2.5.1 *When the instructional support team determines the student should be evaluated to determine eligibility for special education services, the team shall forward a written recommendation to an appropriate, designated staff member within ten (10) school days.*

11.9.2.5.2 *Within ten (10) school days of the recommendation, the student's parents shall be notified in writing of the team's recommendation that the student be evaluated for special education services. The notification shall include a request for parental consent for initial evaluation.*

11.9.2.5.3 *Referrals for an individual student that do not contain all required information and documentation, including the data and other evidence described in 11.9.2.2 and 11.9.2.3, may be returned to the instructional support team with a request that they be supplemented. Parental notification of the team's recommendation, and the request for consent for initial evaluation, shall still occur within ten (10) school days of the initial team recommendation.*

(Authority: 20 U.S.C. 1401(3)); 1412(a)(3); 14 Del.C. §3110)

11 DE Reg. 1628 (06/01/08)