



STATE OF DELAWARE  
STATE COUNCIL FOR PERSONS WITH DISABILITIES  
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January 28, 2013

Mr. Charlie Michels, Executive Director  
Professional Standards Board  
Townsend Building  
401 Federal Street  
Dover, DE 19901

RE: 16 DE Reg. 767 [DOE Final Teacher of Students with Autism/Severe Disabilities Regulation]

Dear Mr. Michels:

The State Council for Persons with Disabilities (SCPD) has reviewed the Professional Standards Board's [in collaboration with the Department of Education (DOE)] final "Teacher of Students with Autism or Severe Disabilities" regulation published as 16 DE Reg. 767 in the January 1, 2013 issue of the Register of Regulations. SCPD commented on the proposed regulation in a December 1, 2012 letter and has the following observations on the final regulation.

First, SCPD identified several concerns with the "definitions" section and proffered suggested amendments. In response, the PSB recites that "the definitions have been amended as suggested." At 768. However, the published regulation then recites that no changes have been made from the proposed version. At 769. Moreover, the link to the new regulation leads to an unrevised version. Id.

Second, SCPD questioned adoption of new terminology, i.e., "severe intellectual disability". The Council questioned whether the term was intended to cover students with moderate intellectual disability (formerly moderate mental retardation). The PSB responded that it has not narrowed the scope of the regulation. At 768. Although not entirely clear, SCPD infers that teachers of students with moderate intellectual disabilities are not covered by the regulation.

Third, SCPD identified an anomaly in the context of the "highly qualified teacher" regulation. The PSB responded that the teachers are expected to be certified under both 14 DE Admin. Code §§1571 (general special education teacher) and 1573 (teacher of students with autism/severe intellectual disability). Thus, Section 1573 is ostensibly not a

“stand alone” certification. This is not literally addressed in the regulation, i.e. there is no requirement in Section 1573 that the teacher also be certified under Section 1571. This may lead to confusion.

Fourth, SCPD endorsed the addition of “APA” course work to training standards. The PSB acknowledged the endorsements.

Fifth, the Councils requested clarification of which teachers would be required to have the “Section 1573” certification. The PSB responded as follows:

The Councils expressed concerns regarding the application of the regulation to Delaware educators. Under the amendments, the certification is required for all educators within public schools teaching within the Delaware Autism Program or educators with a primary assignment teaching children with autism or children with severe intellectual disabilities. (See section 1.0). The PSB found that the past regulation was not consistently applied throughout the state and the amendments were to clarify that this certification is mandatory for the above referenced educators. The certification is currently not required for an educator who is not part of the Delaware Autism Program and has some students with autism in a regular classroom setting. In that case, it is anticipated that the individual students’ needs are addressed by an Individual Education Plan (IEP) with specific services appropriate to the individual student. The PSB will be monitoring the changes to the application of this regulation and will proceed with an amendment as necessary.

At 768. This makes no sense. First, it suggests that DAP students do not have individualized programs based on an IEP. Second, it means that it’s acceptable to have less qualified teachers of “mainstreamed” students with autism or severe intellectual disabilities. Parents can either opt to have their children educated in more segregated settings with very capable teachers or non-segregated settings with less capable teachers. Third, there is no “bright line” between having a “primary assignment teaching students with autism/severe intellectual disabilities” and teaching “some” covered students. If a teacher has 30%, 40%, or 50% of a class with students with autism/severe intellectual disabilities, does s/he need a Section 1573 certification? If the purpose of the regulation is to clarify its application given a lack of uniformity, the revisions are ineffective.

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

Sincerely,



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

cc: The Honorable Mark T. Murphy  
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Ms. Terry Hickey, Esq.  
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