



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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October 24, 2016

Ms. Tina Shockley, Education Associate
Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

RE: 20 DE Reg. 231 [Proposed Medications & Treatment Regulation (10/1/16)]

Dear Ms. Shockley:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposed regulation to conform to recent enactment of the attached S.B. 181. The legislation essentially authorizes a designated caregiver to administer medical marijuana oil to a minor in a preschool, school, or school bus. The proposed regulation was published as 20 DE Reg. 231 in the October 1, 2016 issue of the Register of Regulations. SCPD has the following observations.

First, the DOE revisions are limited to nonregulatory notes. Council did not identify any significant concerns with the proposed revisions.

Second, there is some "tension" between S.B. 181 and disability-related laws. S.B. 181 categorically bars a school nurse, employee or contractor from serving as a designated caregiver for the purpose of administering prescribed medical marijuana oil. In contrast, schools are required to accommodate the needs of students with disabilities under the ADA, Section 504, and the IDEA. In the medication context, public schools have been required to administer insulin, epinephrine, and other drugs. See, e.g., Region IX OCR LOF to Conejo Valley (CA) Unified School District, 20 IDELR 1276 (October 27, 1993) [district violated Section 504 by declining to establish an appropriate emergency response system for insulin-dependent child and disallowing trained laypersons to administer injections]; and Region III OCR LOF to Berlin Brothersvalley (PA) School District, 14 IDELR 353: 124, 125 (December 23, 1988) [district violated Section 504 by requiring parent to sign waiver of liability as precondition of administration of allergy medication]. Cf. Cedar Rapids School District v. Garrett, 526 U.S. 66 (1999) [adopting broad view of school responsibility to provide school health services to students with disabilities]. Administration of medications is a type of school health service. See 34 C.F.R. 300.34. Thus, if an IEP team determined that administration of prescribed marijuana oil were necessary to permit a student to attend school and receive a FAPE, the school would be responsible for implementing/facilitating that determination. At a minimum, the DOE may wish to include a non-regulatory note:

For students with disabilities, limitations on administration of medications are subject to exceptions based on the Americans with Disabilities Act, Section 504, and the IDEA, including a duty to provide school health services and health-related accommodations.

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

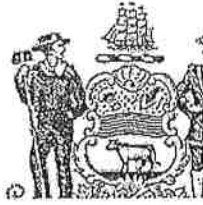
Sincerely,

Jamie Wolfe

Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

cc: The Honorable Matt Denn, Attorney General
The Honorable Steven Godowsky, Ed.D, Secretary of Education
Mr. Chris Kenton, Professional Standards Board
Dr. Teri Quinn Gray, State Board of Education
Ms. Mary Ann Mieczkowski, Department of Education
Ms. Laura Makransky, Esq., Department of Justice
Ms. Terry Hickey, Esq., Department of Justice
Ms. Valerie Dunkle, Esq., Department of Justice
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

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SPONSOR: Sen. Lopez & Rep. Schwartzkopf & Rep. Ramone
Sens. Henry, Townsend, Hocker, Reps. Spiegelman, Hudson,
Baumbach, Osienski, Paradee, Lynn, K. Williams

DELAWARE STATE SENATE

148th GENERAL ASSEMBLY

SENATE BILL NO. 181
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO MEDICAL MARIJUANA OIL

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 4904A, Title 16, Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§4904A Limitations

(a) This chapter does not authorize any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for engaging in, the following conduct:

(2) ~~Possessing~~ Except as provided in subsection (b) of this section, possessing marijuana, or otherwise engaging in the medical use of marijuana:

a. In a school bus;

b. On the grounds of any preschool or primary or secondary school; or

c. In any correctional facility;

d. In any health care or treatment facility operated by the Department or funded contractually through the Department.

(b) School exceptions. Notwithstanding subsection (a) of this section, a designated caregiver registered pursuant to §4908A of this Title may possess for the purpose of administering, and may administer to a minor qualifying patient medical marijuana oil in a school bus and on the grounds or property of the preschool, or primary or secondary school in which a minor qualifying patient is enrolled. The designated caregiver shall not be a school nurse or other school employee hired or contracted by a school unless he or she is a parent or legal guardian of the minor qualifying patient, and said parent

or legal guardian possesses no more than the number of dose(s) prescribed per day of medical marijuana oil which is kept at all times on their person . Provided further, this exception shall only apply within the physical boundaries of the State of Delaware.