

August 15, 2012

Susan Haberstroh, Education Associate
Regulation Review
Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

RE: DOE Proposed Supportive Instruction (Homebound) Reg. [16 DE Reg. 160 (August 1, 2012)]

Dear Ms. Haberstroh:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the DOE proposal to adopt some discrete amendments to its supportive instruction (homebound) regulation. Some of the changes are prompted by enactment of the Disabilities Law Program (DLP)-authored legislation (Senate Bill No. 112) in 2011. A copy of the engrossed bill is attached. The GACEC would like to share the following observations.

First, in §2.1, the term "public school" should be substituted for "school district". The entitlement applies to public school students enrolled in either a district or charter school.

Second, in §2.1.3.2, the second sentence should be amended to read as follows: "Postpartum absences must be certified by a physician or an advanced practice nurse who is employed by or has a collaborative agreement with a licensed physician. This amendment is required by Senate Bill No. 112.

Third, in §3.1.1.2, Council suggests substituting "public school" for "school district" since the homebound entitlement applies to charter schools.

Fourth, §§1.0 and 4.0 authorize public schools to provide homebound services to a student who is suspended, expelled or subject to expulsion. Without further guidance, this may result in public schools violating Title 14 Del.C. §1604(8). See also attached H.B. No. 326 from 144th General Assembly which established §1604(8). By law, the described students are presumptively eligible for enrollment in an alternative school. The regulation could easily be misconstrued as authorizing public schools to routinely place described students on homebound for three to five hours weekly rather than offering full-time placement in an alternative school. At an absolute minimum, the new sentence in §1.0 should include an introductory phrase - "Subject to Title 14 Del.C. §1604(8), (t)his may also include... Section 4.0 could then be amended by adding the following second sentence: "Such policy shall conform to, and not circumvent, any qualifying student's eligibility for enrollment in a consortium discipline alternative program pursuant to Title 14 Del.C. §1604 and 14 DE Admin Code 611."

Fifth, the three to five hour minimum standard in §3.1.1 is not even marginally adequate. See, e.g., Region IV OCR LOF to Memphis (TN) City School District, 20 IDELR 85, 86 (April 23, 1993) [provision of three hours weekly homebound instruction in IEP based on district policy violates §504]; and Region I OCR LOF to Boston Public Schools, 21 IDELR 170 (June 10, 1994) [four hours weekly of homebound instruction violates §504 and ADA]. Moreover, in practice, the minimum has historically been the norm. The U.S. Department of Education disallows homebound based on a formula or set number of hours for students with disabilities. See attached materials. At a minimum, the following third sentence should be added to §3.1.1.1 (or added as a new §3.1.1.3): "For students identified under the IDEA or §504 of the Rehabilitation Act, the

extent of weekly supportive instruction must be individually determined to ensure FAPE.” This statement is consistent with long-standing DOE policy but absent from the regulation.

Sixth, the prevailing practice in Delaware is to offer homebound as an after-school hours option only. For students with disabilities, this may also violate §504 and the ADA. Region I OCR LOF to Boston Public Schools, 21 IDELR 170 (June 10, 1994)[disallowing practice of only offering “after-school hours” homebound]. The regulation contains no guidance in this context.

Seventh, Senate Bill No. 112 authorizes the DOE to “identify the licensed professionals authorized to certify eligibility for supportive instruction”. The DOE should consider adding “physician assistants” licensed under Title 24 Del.C. Ch. 17 and 24 DE Admin Code 1700, §24. Physician assistants, like advanced practice registered nurses (APRNs), work under the supervision of a physician and can diagnose and prescribe treatment. Recent legislation has included physician assistants as well as APRNs as alternatives to physicians for authoritative medical opinions. See H.B. No. 261 (signed July 18, 2012); and S.B. No. 138 (signed July 6, 2009). See also Title 16 Del.C. §3003D(c).

Please feel free to contact me or Wendy Strauss should you have questions or concerns in regard to our position or comments.

Sincerely,

Terri A. Hancharick
Chairperson

TAH:kpc

CC: The Honorable Matt Denn, Lt. Governor
The Honorable Mark Murphy, Secretary of Education
Dr. Teri Quinn Gray, State Board of Education
Charles Michels, Professional Standards Board
Mary Ann Mieczkowski, DOE
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Enclosures