

November 14, 2012

Charles Michels, Executive Director  
Delaware Professional Standards Board  
John G. Townsend Building  
401 Federal Street  
Dover, DE 19901

**RE: DOE Proposed Teacher of Students with Autism/Severe Disabilities Regulation [16 DE Reg. 489 (November 1, 2012)]**

Dear Mr. Michels:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Professional Standards Board and DOE proposal to adopt a completely revised certification regulation entitled "Teacher of Students with Autism or Severe Disabilities" codified at 14 DE Admin Code 1573. Council would like to share the following observations.

First, in §2.2, the definitions of "autism", "intellectual disability", and "severe intellectual disability" merit revision based on the following:

A. The multiple references to Subparts A and D are unclear. These subparts do not appear in the cited regulations.

B. The definitions are imprecise and confusing. For example, reciting that "autism" means a disability as defined in 14 DE Admin Code 922 and 925 literally means autism includes any and all disability classifications (e.g. ED; LD; PI). The same deficiency applies to the definitions of "intellectual disability" and "severe intellectual disability". For an alternate approach, see 14 DE Admin Code 608, §1.0, definitions of "crime", "terroristic threatening", and "violent felony". Based on the latter analogy, it would be preferable to consider the following amendments:

"Autism" shall have the same meaning as provided in 14 DE Admin Code 922, §3.0 and 14 DE Admin Code 925, §6.6.

"Intellectual disability" shall have the same meaning as provided in 14 DE Admin Code 922, §3.0 and 14 DE Admin Code 925, §6.12.

"Severe intellectual disability" shall have the same meaning as provided in 14 DE Admin Code 925, §6.12.

Second, the regulation substitutes “severe intellectual disability” for the current term, “severe disabilities” or “severe developmental disabilities”. See superseded version at 490-491. There were no definitions of these terms in the regulation. The latter terms would not be limited to “mental retardation” or “intellectual disability”. It is unclear if the terms “severe disabilities” and “severe developmental disabilities” were interpreted, in practice, to only cover children with severe mental retardation/severe intellectual disability, i.e. those with an I.Q. of 35 or less. For example, does the current regulation also cover children with moderate intellectual disability (formerly moderate mental retardation)? Council is concerned that the regulation may be adopting more narrow criteria which would merit a more substantive analysis rather than simply viewing the language change as benign and non-substantive.

Third, there is tension between the proposed regulation and 14 DE Admin Code 922, §3.0, definition of “highly qualified special education teachers”, Par. 2.0. The latter regulation restricts “highly qualified” teachers to those with “State certification as a special education teacher”. Literally, this would be limited to educators certified under the special education teacher standard, 14 DE Admin Code 1571, to the exclusion of teachers certified under 14 DE Admin Code 1573-1575. The DOE may wish to consider amending Part 1571 for consistency.

Fourth, the addition of Applied Behavior Analysis (ABA) coursework (§4.1.2.1.4) merits our endorsement.

Fifth, the Council would like to inquire about the application of the “Teacher of Students with Autism or Severe Disabilities” certification. As a practical matter, we could not identify in which contexts the certification would be required. There are some general regulatory references to qualified teachers (14 DE Admin Code 923, §56.0; 14 DE Admin Code 922, §3.0, definition of “highly qualified special education teachers”) but we could not locate any standards which definitively address when a teacher would require this particular certification in our analysis of the proposed regulation.

Thank you in advance for your consideration of our comments and observations. Please feel free to contact me or Wendy Strauss should you have any questions.

Sincerely,

Terri A Hancharick  
Chairperson

TAH:kpc

CC: The Honorable Mark Murphy, Secretary of Education  
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