

January 16, 2013

Susan Haberstroh, Regulation Review
Department of Education
35 Commerce Way, Suite 1
Dover, Delaware

RE: DOE Proposed Driver Education Regulation [16 DE Reg. 691 (January 1, 2013)]

Dear Ms. Haberstroh:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Department of Education proposal to revise its driver education regulation to conform to House Bill No. 264 which was enacted in April, 2012. A copy of the legislation is attached for facilitated reference. In summary, the legislation is designed to provide flexibility for Individuals with Disabilities Education Act (IDEA)-classified students in enrollment in driver education courses. The material authorization is as follows:

(b) A student who is receiving special education services under an active student's individualized education plan (IEP) will be authorized until age 21 to complete their driver education certification through a State-approved driver education course. Pursuant to Department of Education regulation, the student may be authorized to subsequently enroll in another driver education course if the student fails the driver education course during the regular school year.

Council would like to share the following observations on the proposed regulation.

First, in §1.1, Council recommends inserting "and related services" after the term "specialized instruction". For example, a student may need special hand controls or vehicle modifications in order to be successful. Such assistive technology could be considered either specialized instruction or a related service. Moreover, a student may need Occupational Therapy (OT) services in order to address seating, gripping, and access to controls in a vehicle.

Second, in §1.1.3, Council recommends deletion of the term "for taking the course one additional time". Our rationale is as follows:

A. The relevant IDEA regulation requires that special education and related services be provided "at public expense" and "without charge". See 34 C.F.R. §300.17. The State statute and regulation specifically envision IEP team involvement in students' participation in driver education course work. IEP-included education must be free.

B. The statute does not literally limit an IDEA-identified student to retaking driver education only once. The student is simply authorized to enroll in another course. See also §1.1, referring to "multiple opportunities to take the driver education course". Interpreting the statute as limiting an

IDEA-classified student to only two attempts to pass a driver education course is precluded by federal law. Special education must be individualized and enrollment in courses which are part of “FAPE” cannot be “capped”.

C. OSEP interpretations support enrollment in a third or fourth driver education class with IEP team approval at no charge. The Office of Special Education Programs (OSEP) allows parents to be charged minor incidental or “maintenance fees” (e.g. for art, chemistry, or lab supplies). See attached OSEP Policy Letter to Anonymous, 20 IDELR 1155 (October 8, 1993). OSEP does not permit parental liability for tuition costs. See attached OSEP Policy Letter to Nevelidine, 22 IDELR 630 (January 25, 1995). The cost of a driver education course is conceptually a tuition charge, not an incidental fee.

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,

Dafne A. Carnright
Vice Chairperson

DAC:kpc

CC: The Honorable Mark Murphy, Secretary of Education
Dr. Teri Quinn Gray, State Board of Education
Charles Michels, Professional Standards Board
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Enclosures