

January 16, 2013

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

RE: DOE Proposed Administration of Medications and Treatments Regulation [16 DE Reg. 696 (January 1, 2013)]

Dear Ms. Haberstroh:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Department of Education proposal to adopt a revised regulation covering medications and treatments. The "Synopsis of Subject Matter of the Regulation" provides the following overview:

The amendments include the addition of definitions, clarification of the process for the administration of medications and treatments, and also changes that reflect recent amendments to 24 Del.C. Section 1921(a)(17) relating to who may assist students with medications and when they may do so.

At 696.

The latest legislation revising §1921(a)(17) is the attached Senate Bill No. 257 signed by the Governor on July 18, 2012.

The regulation is comprehensive and logical in format; however, Council would like to share a few observations.

First, §1.2.2 states the following, "Medications and dosages administered by the school nurse shall be limited to those recommended by the Federal Drug Administration (FDA), peer review journal that indicates doses or guidelines that are both safe and effective, or guidelines that are specified in regional or national guidelines. Council would like clarification on this section. If the doctor prescribes a dosage that is higher than the recommended dosage and the medication is brought to school in its original container, is the nurse responsible for checking the FDA peer review journal? Would the nurse be held liable if the dosage is not checked in the journal?

Second, §1.2.1 requires the prescription medication to be provided to the school "in the original container". This requirement could present some practical problems if a medication must be supplied to more than one provider (e.g. school and after-school program). Moreover, the State criminal statute requiring that prescription medications be kept in an original container was repealed a few years ago. On the other hand, a pharmacy will generally provide a second labeled container on request. Moreover, providing the original container with label reduces prospects for medication

errors. Council does not object to the requirement that the medication be provided in the original container; however, we believe it would be preferable if schools alerted parents that they should obtain a second labeled container from the pharmacy when filling prescriptions. Many parents may not be aware of this option.

Third, in §3.0, a comma should be inserted after the word “Treatments”.

Fourth, in §5.1, the grammar is incorrect. At a minimum, the word “who” should be inserted between “employees” and “are”. However, since the statute does not “authorize” all educators and employees to assist with medication, Council recommends substituting “employees who qualify under 24 Del.C. §1921(a)(17) to assist a student...” This terminology is consistent with the language used in §5.1.2.

Fifth, Council would like clarification on what constitutes a ‘dose’ of medication. For example, if a doctor prescribes a controlled substance that is to be taken once every four hours, could enough of the medication be brought to school and administered without violating section 5.1.1.2.1 in terms of multiple doses? Does Section 5.1.1.1.1 apply to controlled substances as well?

Thank you in advance for your consideration of our 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
Mary Ann Mieczkowski, DOE
John Hindman, Esq., DOE
Terry Hickey, Esq., DOE
Paula Fontello, Esq., DOE

Enclosure