

June 19, 2014

Susan Haberstroh, Associate Secretary  
Education Supports and Innovative Practices  
Department of Education  
Townsend Building  
401 Federal Street  
Dover, DE 19901

**RE: Department of Education Proposed Limitations on Use of Seclusion and Restraint Regulation [17 DE Reg. 1133 (June 1, 2014)]**

Dear Ms. Haberstroh:

The Governor's Advisory Council for Exceptional Citizens (GACEC) reviewed the Department of Education pre-publication draft of the restraints and seclusion regulations and provided comments on April 24, 2014. Those comments included the legal analysis from the State Council for Persons with Disabilities Policy and Law committee, the GACEC Policy and Law committee and comments from individual GACEC members. Our earlier letter is attached for your reference. Council would like to share the following observations on the proposed regulations and reiterate some of our earlier concerns.

First, Council would like to reiterate that §1.1 omits any reference to "chemical" restraint. Compare §2.0, definition of "chemical restraint"; and §3.1.1. The first sentence could be amended as follows: "The purpose...physical restraint, chemical restraint, mechanical restraint..."

Second, Council would like to reiterate that a reference needs to be made to 14 Del.C. §3110 as originally mentioned in the April 24 letter, item #2.

Third, Council reiterates the need in §2.0, definition of "mechanical restraint", second bullet, to insert "or" between "movement" and "stability".

Fourth, in §3.2.9, strike "; and" and substitute a period.

Fifth, Council considers the standards in §4.1 to be rather weak. The reference to "nationally recognized training programs" is a limited standard at best. The term "approved by the Department" should be inserted after "programs". Compare 14 DE Admin Code 910 (DOE must approve alternatives to GED testing).

Sixth, in §5.1, first line, Council recommends deleting "a" and substituting "attempts" for "attempt".

Seventh, in §6.1.2, first line, convert “Written” to low case. Compare §6.1.3.

Eighth, Council mentioned in Comment #22 of our earlier letter that duration of the physical restraint would be useful information and recommends inserting “duration” of restraint. This is a very important component of a restraint, i.e., did the restraint last five minutes or an hour. Compare §8.3.3 and Title 16 Del.C. §5162(a).

Ninth, in §8.1.2.1, delete the word “and” at the end.

Tenth, based on the observation that the waiver can last up to one year (§8.3.4) and parental consent is required for the waiver (§8.1.3), Council recommends the DOE address the protocol that will apply if parent changes their mind after the waiver is approved.

Eleventh, in §8.2, the 60 day period for the review committee to issue a decision would be followed by a review period for the Secretary to “consider the whole record of the case and the committee’s recommendations” (§8.4) followed by mailing of a decision. If a student is manifesting extreme behaviors during this period, a quicker review may be in the best interest of everyone involved. At a minimum, consider the following revision to §8.2: “All requests.....shall be rendered as soon as practicable but in no event more than 60 days from receipt of the waiver request.”

Thank you for your consideration of our comments and recommendations. Please contact the GACEC office if you have any questions.

Sincerely,

Terri A. Hancharick  
Chairperson

TAH:kpc

CC: The Honorable Mark Murphy, Secretary of Education  
The Honorable Jennifer Ranji, Secretary of DSCY&F  
Dr. Teri Quinn Gray, State Board of Education  
Mr. Chris Kenton, Professional Standards Board  
Ms. Mary Ann Mieczkowski, Department of Education  
Ms. Paula Fontello, Esq., Department of Education  
Ms. Terry Hickey, Esq., Department of Education  
Ms. Ilona Kirshon, Esq., Department of Justice

Attachments