

December 30, 2014

Elizabeth Timm
Office of Childcare Licensing
1825 Faulkland Road
Wilmington, DE 19805

RE: DFS Revised Proposed Early Care and Education and School-Age Centers Regulation [18 DE Reg. 438 (December 1, 2014)]

Dear Ms. Timm:

The Governor's Advisory Council for Exceptional Citizens (GACEC) commented on the proposed version of this regulation in June, 2014. A copy of the GACEC June 26, 2014 letter is enclosed for your reference. The Division of Family Services (DFS) has now issued a revised proposed set of regulations. Council would like to share the following observations on the 69 pages of revised proposed standards.

1. The GACEC promoted the incorporation of more robust non-discrimination language than the brief reference in §25.1.3. Section 35.1.2 has been amended to include an assurance of non-discrimination based on disability and other protected classes. This could still be improved by including a specific reference to the Americans with Disabilities Act (ADA) and Delaware equal accommodations statutes consistent with the opinion of the Attorney General (p. 4) included with the GACEC June commentary.
2. In the June commentary, Council objected to authorization for children to ride bikes without helmets if the bike has wheels of less than 20 inches in diameter. Section 41.0 remains unchanged and Council would like to reiterate the comment.
3. In the June commentary, the GACEC recommended adoption of a requirement of notification to DFS for each administration of extended physical restraint. No change to §13.0 has been made; therefore, Council would like to reiterate this comment.
4. In §3.0, the definition of IEP recites that it covers the educational program "for a child three (3) years of age or older". This is not entirely accurate. Children with certain classifications are eligible

under IDEA-B for an IEP at birth. See Title 14 Del.C. §3101(3) and §1703(k)(1)(m).

5. In §19.1, there is an extraneous “129”.

6. Section 43.2 allows a provider to have one toilet for 15 school-age children plus staff. For younger children, the standard is one toilet for every 10 children aged 24 months through preschool plus staff. Council recommends consideration of a lower ratio. Ready access to a toilet is not provided under this arrangement. The Council recently criticized continuation of a 1-8 individual-toilet ratio for family care homes in commenting on a proposed regulation published at 18 DE Reg. 282 (10/1/14). Other regulations require one toilet for every four individuals. See the neighborhood home regulation [requiring 1 toilet for every four (4) individuals (16 DE Admin Code 3310, §9.0)]. See also 16 DE Admin Code 3230, §5.9, and 16 DE Admin Code 3301, §5.9. Moreover, toddlers and children may need assistance in toileting and “turnover” may not be quick.

7. DFS may wish to review the proposed DOE regulation published this month [18 DE Reg. 419 (12/1/14)] regarding emergency administration of medications in the event of allergic reactions. The DOE regulation covers pre-kindergarten programs in schools. See §2.0, definition of “school”. There may be overlapping jurisdiction with DFS over some programs. Compare §§3.2 and 3.3 (DFS regulation covers early care and school age centers within schools). DFS may wish to promote compatibility between its standards (e.g. §§60-61) and the DOE standards in the context of emergency interventions related to allergic reactions. Section 61.2 generally authorizes staff to “take appropriate emergency action” in response to allergic reactions.

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

Sincerely,

Robert D. Overmiller
Chairperson

RDO:kpc

Attachments