

November 18, 2015

Tina Shockley
Education Associate – Policy Advisor
Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

RE: 19 DE Reg. 362/14 DE Admin. Code 817 [DOE Proposed Medications and Treatments Regulation (November 1, 2015)]

Dear Ms. Shockley:

The Governor’s Advisory Council for Exceptional Citizens (GACEC) has reviewed the Department of Education (DOE) proposal to amend its regulation covering assistance with self- administration of medications at approved school activities. The GACEC **opposes** the proposed regulations based on the following concerns.

As background, it is settled law that public schools must provide healthcare accommodations to facilitate participation of students with disabilities on field trips and school-sponsored events. The Office of the Delaware Attorney General issued the attached opinion in 1994 highlighting that obligation. In 2000, the Legislature enacted Senate Bill No. 382, authored by Senator Blevins, to authorize trained educators to assist students with self-administration of medications on field trips. In 2012, the Legislature enacted Senate Bill No. 257, authored by Senator Hall-Long, which expanded the law to permit trained coaches and persons under contract to assist with medications in approved school activities outside the traditional school day or off-campus. Copies of the legislation are attached.

The Department of Education never fully implemented Senate Bill No. 257, restricting assistance with medications to “employees” and excluding contractors. See attached regulation, 19 DE Reg. 362, 363, §6.1 (November 1, 2015).

The Department is now proposing a regulation to allow public schools to adopt exemptions from the above system:

6.2. District and charter school boards may develop policies for unique Approved School Activities for which the specified process is unable to be implemented.

The DOE envisions such exemptions applying to “extended field trips”:

This regulation is amended to clarify assistance with self-administration of medications at unique approved school activities, such as extended field trips...

At 362.

This “exemption” authorization is ill-conceived, undermines the intent of the State legislation noted above and invites non-compliance with federal law. Given the reference to “extended” field trips, Council infers that the justification for this initiative is based on cost concerns or limited availability of trained employees. These are insufficient reasons to authorize exemptions from providing medication support to students.

A U.S. Supreme Court decision is informative. In Cedar Rapids Community School District v. Garret, 526 U.S. 66 (1999) (see attached), the Supreme Court rejected a “cost defense” in regard to a district obligation to provide continuous one-to-one nursing services to a ventilator dependent student paralyzed from the neck down. If a school district can be required to provide continuous 1:1 nursing care to a student, it is difficult to imagine a scenario in which a district could legally decline to provide medication support for an “extended field trip”. Districts can utilize a school nurse, a trained employee or a trained contractor to facilitate student participation in off-campus activities. If a district has insufficient trained personnel, it can hire a nurse to provide medication assistance in the activity.

Please contact me or Wendy Strauss at the GACEC office if you have any questions on our observations. Thank you for your consideration.

Sincerely,

Robert D. Overmiller
Chairperson

RDO:kpc

CC: The Honorable Matthew Denn, Delaware Attorney General
The Honorable Dr. Steven H. Godowsky, Secretary of Education
The Honorable Patricia Blevins, Delaware State Senate
The Honorable Bethany Hall-Long, Delaware State Senate
Dr. Teri Quinn Gray, State Board of Education
Mr. Chris Kenton, Professional Standards Board
Mary Ann Mieczkowski, Department of Education
Matthew Korobkin, Department of Education
Kathleen Geiszler, Esq.
Terry Hickey, Esq.
Ilona Kirshon, Esq.

Attachments