

**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS**

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Tina Shockley  
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Department of Education  
401 Federal Street, Suite 2  
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**RE: 18 DE Reg. 281 [DOE Proposed Evaluations, Eligibility Determinations and IEP Reading Interventions Regulation (October 1, 2014)]**

Dear Ms. Shockley:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Department of Education (DOE) proposal to adopt some distinct changes to its IEP standards to implement Senate Bill No. 229. Council would like to share the following observations.

First, the DOE is proposing a few edits to eligibility standards. See §§6.11 and 6.12.4. The change to §6.12.4 is problematic:

6.12.4 Age of Eligibility: The age of eligibility of children identified as under Moderate Intellectual Disability and Severe Intellectual Disability Categories shall be from the third birthday through ~~20 years, inclusive~~ 21 years of age.

The revision is inconsistent with statutory law:

(1) "Child" means a person of 3 years of age, or an earlier age if otherwise provided in this title, until the receipt of a regular high school diploma or the end of the school year in which the person attains the age of 21, whichever occurs first.

Title 14 Del.C. §3101. All of the DOE eligibility regulations incorporate the statutory standard for termination of eligibility. See, e.g., 14 DE Admin Code 925, §§6.6.3, 6.13.5, and 6.17.5. The standard is also reinforced in 14 DE Admin Code 925, §6.5.4:

6.5.4. Exit Criteria: A child's eligibility for special education and related services shall terminate when:

6.5.4.1 the child reaches his or her 21<sup>st</sup> birthday. A child with a disability who reaches his or her 21<sup>st</sup> birthday after August 31 may continue to receive special education and related services until the end of the school year, including appropriate summer services through August 31; or

6.5.4.2 the child graduates from high school with a regular high school diploma. As used in this subsection, regular high school diploma does not include a GED;...

Based on the analysis above, the proposed regulation should be amended as follows:

6.12.4 Age of Eligibility: The age of eligibility of children identified as under Moderate Intellectual Disability and Severe Intellectual Disability Categories shall be from the third birthday ~~through 20 years, inclusive~~ ~~[21 years of age]~~ **until the receipt of a regular high school diploma or the end of the school year in which the student attains the age of twenty-one (21), whichever occurs first.**

Second, §24.0 is being revised to add the following considerations when developing an IEP:

24.2.7. In the case of any child with limited reading proficiency, consider the reading services, supports and evidenced based interventions as those relate to the child's IEP;

24.2.7.1. For a child who is not beginning to read by age seven, or who is beyond age seven and is not yet beginning to read, enumerate the specific, evidence-based interventions that are being provided to that child to address the child's inability to read.

This language is generally consistent with Senate Bill No. 229. However, it would be highly preferable to also include a reference to "prompt" the IEP team to address ESY as contemplated by Senate Bill No. 229. Council would like to note that 'evidenced based'... in 24.2.7 should read evidence-based (see 24.2.7.1) and would like to recommend adoption of the following standard:

24.2.7. In the case of any child with limited reading proficiency, consider the reading services, supports and **evidence-based** interventions as those relate to the child's IEP;

24.2.7.1. For a child who is not beginning to read by age seven, or who is beyond age seven and is not yet beginning to read, the IEP shall:

24.2.7.1. Enumerate the specific, evidence-based interventions that are being provided to that child to address the child's inability to read; and

24.2.7.2. Provide for evidence-based interventions through extended school year (ESY) services absent a specific explanation in the IEP why such services are inappropriate.

The omission of §24.2.7.2 from the proposed regulation is extremely problematic since it is not "captured" by any other DOE regulation and is explicitly required by Senate Bill No. 229. The effect is that IEP teams (and parents) will be unaware of the presumption that interventions be provided during the summer unless the contrary rationale is documented in the IEP. It is logical to include this provision within §24.0. Compare §24.2.3 (IEP must provide for Braille instruction unless IEP team determines Braille inappropriate).

Thank you for your consideration of our comments and recommendations. We look forward to our continuing collaboration on the implementation of the requirements noted in Senate Bill No. 229. Please contact me or Wendy Strauss at the GACEC office if you have any questions on our observations.

Sincerely,

  
Robert D. Overmiller  
Chairperson

RDO:kpc

CC: The Honorable Matthew Denn, Lt. Governor  
The Honorable Mark Murphy, Secretary of Education  
The Honorable Nicole Poore, Delaware Senate  
The Honorable Bethany Hall-Long, Delaware Senate  
The Honorable Valerie Longhurst, Delaware House of Representatives  
The Honorable Quinton Johnson, Delaware House of Representatives  
The Honorable Michael Ramone, Delaware House of Representatives  
The Honorable Melanie Smith, Delaware House of Representatives  
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