

October 25, 2016

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

**RE: 20 DE Reg. 231/14 DE Admin. Code 817 [DOE Proposed Medications and Treatments Regulation (October 1, 2016)]**

Dear Ms. Shockley:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Department of Education (DOE) proposal to amend regulations to conform to the enactment of Senate Bill No. 181. Senate Bill No. 181 authorizes a designated caregiver to administer medical marijuana oil to a minor in a preschool, school or school bus. Council would like to share the following observation.

There is conflict between Senate Bill No. 181 and disability-related laws. Senate Bill No. 181 definitively bars a school nurse, employee or contractor from serving as a designated caregiver for the purpose of administering prescribed medical marijuana oil. In contrast, schools are required to accommodate the needs of students with disabilities under the ADA, Section 504, and the IDEA. In the medication context, public schools have been required to administer insulin, epinephrine, and other drugs. See, e.g., Region IX OCR LOF to Conejo Valley (CA) Unified School District, 20 IDELR 1276 (October 27, 1993) [district violated Section 504 by declining to establish an appropriate emergency response system for insulin-dependent child and disallowing trained laypersons to administer injections]; and Region III OCR LOF to Berlin Brothersvalley (PA) School District, 14 IDELR 353: 124, 125 (December 23, 1988) [district violated Section 504 by requiring parent to sign waiver of liability as precondition of administration of allergy medication]. Cf. Cedar Rapids School District v. Garrett, 526 U.S. 66 (1999) [adopting broad view of school responsibility to provide school health services to students with disabilities].

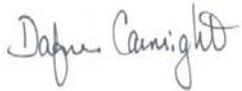
The administration of medications is a type of school health service. See 34 C.F.R. 300.34.

Therefore, if an IEP team determined that administration of prescribed marijuana oil were necessary to permit a student to attend school and receive a Free Appropriate Public Education or FAPE, the school would be responsible for implementing/facilitating that determination. At a minimum, the DOE may wish to include a non-regulatory note:

For students with disabilities, limitations on administration of medications are subject to exceptions based on the Americans with Disabilities Act, Section 504, and the IDEA, including a duty to provide school health services and health-related accommodations.

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

Sincerely,



Dafne A. Carnright  
Chairperson

DAC:kpc

CC: The Honorable Matthew L. Denn, Attorney General  
The Honorable Dr. Steven H. Godowsky, Secretary of Education  
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  
Terry Hickey, Esq.  
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