

October 25, 2016

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

RE: 20 DE Reg. 234/14 DE Admin. Code 926 [DOE Proposed “Age of Majority” 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 adopt two regulations implementing Senate Bill No. 180. Senate Bill No. 180 implements a federal regulation (34 C.F.R. 300.) which addresses educational decision-making once a student reaches the age of 18. The GACEC, Disabilities Law Program (DLP) and other councils were highly involved with the drafting and enactment of the legislation, which requires the DOE to develop implementing regulations in consultation with the GACEC. Representatives of the DOE, GACEC, DLP, other councils and school districts reached consensus on the regulatory language in September. Council **endorses** the proposed regulation subject to consideration of one important suggestion.

This regulation essentially implements the requirements of Senate Bill No. 180 while adding some supplemental provisions. For example, if the IEP team determined that a student lacked capacity in a prior review, the participation of a school psychologist in later IEP meetings would be “discretionary if it is clear there has been no change in the child’s capacity.” See §20.1.3.1.

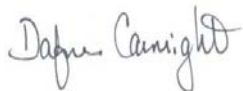
At the federal level, the President’s Committee for People with Intellectual Disabilities issued an October 6, 2016 report which includes “Recommendation 55” encouraging the sharing of information about supported decision-making with families of IDEA transitioning students. At the State level, Governor Markell signed Senate Bill No. 230 on September 15, 2016. That legislation authorizes competent adults to execute a “supported decision-making agreement”. It

would be preferable for IEP teams to be aware of this option. For example, the new law specifically authorizes agents appointed through a supported decision-making agreement to assist with accessing educational records and assisting the principal (adult student) with educational decision-making. See, e.g. 16 Del.C. §§9403A(11)(h), 9406A(a)(2), and 9409A. Since the regulation (§20.1.2) already addresses powers of attorney and voluntary grants of authority, it makes sense to include a reference to supported decision-making in the same section. Council suggests the DOE consider adding the following bracketed second sentence to §20.1.2 as follows:

20.1.2. A child with a disability with capacity may authorize an adult agent to exercise rights through execution of a power of attorney or standard voluntary grant of authority form published by the Department of Education. [A child with a disability with capacity may also authorize an adult agent to provide assistance with making and communicating educational decisions through execution of a supported decision-making agreement authorized by 16 Del.C. Ch. 94A.]

Thank you in advance for your consideration of our suggestion and endorsement. We appreciate the opportunity to work with the DOE on these regulations.

Sincerely,



Dafne A. Carnright
Chairperson

DAC:kpc

CC: The Honorable Dr. Steven H. Godowsky, Secretary of Education
The Honorable Nicole Poore, Delaware State Senate
The Honorable Debra Heffernan, Delaware State House of Representatives
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.
Valerie Dunkle, Esq.