



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Lookerman St., Dover, DE 19904  
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January 29, 2019

Kelly McDowell  
Office of Child Care Licensing  
Division of Family Services  
Department of Services for Children, Youth and their Families  
3411 Silverside Road, Hagley Building  
Wilmington, DE 19810

**RE: 22 DE Reg. 574 DFS OCCL Proposed DELACARE Regulations for Early Care and Education and School-Age Centers Regulation [(January 1, 2019)]**

Dear Ms. McDowell:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Family Services Office of Child Care Licensing (OCCL) revised proposal to amend its DELACARE: Regulations for Early Care and Education and School-Age Centers. Council endorsed the earlier amendments and provided observations in a letter dated December 5, 2018. A copy of that letter is attached for your reference. We appreciate the changes that were made to the re-published amendments based on several of those observations. Council **endorses** the revised proposed amendments; however, we would still like to share the following observations.

First, Council is still concerned about how OCCL will ensure that licensees develop and consistently implement a written policy on administration of medication. Although OCCL requires policies on medication administration to be included in the parent/guardian handbook (Subsection 23.1.13), the proposed regulations do not indicate that these policies must be approved by OCCL. Nor do they provide any guidelines on what the policies in the parent/guardian handbook must convey. As was previously recommended, policies on medication administration should clearly state that the child care center will provide reasonable accommodations for children with medication needs, including medication by non-intravenous

injections. A formal non-discrimination statement related to medications will promote child care centers' compliance with federal and state anti-discrimination laws and enhance centers' public accountability.

Second, Council is concerned that child care centers may interpret the language in Subsection 63.6 as meaning that they have complete discretion over whether or not to deliver medication by injection. The effect of the wording in Subsection 63.8 is to highlight that OCCL will not mandate the administration of medication by injection and will only take enforcement action in limited circumstances. While it is true that OCCL does not enforce the ADA or the Delaware Equal Accommodations Law (DEAL), child care facilities frequently misunderstand their obligations under these anti-discrimination laws. We therefore ask that OCCL revise Subsection 63.8 to explicitly note that medication administration may be required under state and federal laws even though it may not be mandatory under OCCL regulations. Without this extra emphasis and clarification, child care centers may resist modifying their own policies and practices around this issue. Yet under the ADA, child care facilities must, as a general rule, provide medication by injections when parents or guardians request them to.

The new Subsection 12.5, explains how OCCL will refer complaints relating to the laws of other governmental entities, including but not limited to the ADA and DEAL, to appropriate enforcement authorities for investigation. In addition, Council would suggest that OCCL not only refer complaining parties to the relevant enforcement authorities, but also to the Community Legal Aid Society (CLASI) for advice or possible representation. As the Protection and Advocacy agency for the State of Delaware, CLASI is able to assist families and individuals who wish to pursue ADA and DEAL complaints.

Again, we appreciate the changes that were made to the earlier proposed amendment based on our observations. Thank you for your consideration of our current endorsement and observations. Please contact me or Wendy Strauss at the GACEC office if you have any questions.

Sincerely,

*Ann C Fisher*

Ann C. Fisher  
Chairperson

ACF: kpc

Attachment