



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Lookerman St., Dover, DE 19904
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November 26, 2019

Department of Education
Office of the Secretary
Attn: Regulation Review
401 Federal Street, Suite 2
Dover, DE 19901

RE: 23 DE Reg. 361/14 DE Admin. Code 1150 [DOE Proposed School Transportation Regulation (November 1, 2019)]

Dear Secretary Bunting:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Department of Education (DOE) proposal to amend 14 DE Admin. Code 1150, related to school transportation. The regulation is being amended to clarify safety procedures and protocols and to align with federal and state requirements motor vehicle requirements. Council would like to share the following observations.

First, subsection 3.1.23 requires districts to ensure that training is provided to bus drivers and aides who "perform duties on buses that transport wheelchairs and students using safety seats." Such trainings must include proper securement of wheelchairs, safety seats and safety equipment. Council commends the DOE for requiring such training; however, Council would suggest DOE go a step further and require that all Bus Drivers, Aides, and supervisors receive such training, rather than only those who perform duties on buses with wheelchair/safety seat users. This will help ensure the safety of students with disabilities, regardless of last minute or urgent staffing changes on their bus. Also, Council queries whether it would be advantageous to require bus drivers and aides to be familiar with students' communication methods in the event of an emergency?

Second, subsection 8.3.13 specifies, "Aides should remain in close proximity of the bus and should not cross students farther than the front drivers cross view mirror or escort students to their houses." However, a child may require additional or different escorts, such as door-to-door transportation, pursuant to an IEP or Section 504 plan. Council would request that this be clarified in the regulation either explicitly or by cross-referencing proposed subsection 12.10 ("Additional transportation benefits are determined based upon the Pupil's individual needs as specified in a 504 or IEP..."). This comment also applies to 10.8.1.

Third, Council encourages the DOE to consider amending subsection 10.16, with respect to service animals, to ensure compliance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act, in addition to the IEP or 504 Plan as mentioned.

Fourth, Section 10.25 states the following: “No Pupil shall be carried up or down the bus steps during normal loading and unloading, and safety protocols shall be put in place to safely load and unload the Pupil.” However, it is unclear what is meant by “...and safety protocols shall be put in place to safely load and unload the Pupil”. Council asks that this section be made clearer.

Fifth, Section 12.10 clarifies that “Additional transportation benefits are determined based upon the Pupil’s individual needs as specified in a 504 or IEP...” Council asks that the DOE consider adding “or modified” to this section to clarify that not only may some students require additional transportation benefits, such as a 1:1 Aide during transit, some will require modifications to transportation, e.g. moving the bus stop to an accessible location or door to door transport. Council would also recommend that the ADA and Section 504 of the Rehabilitation Act, be referenced in this provision as well, as a student may need accessible transportation without necessarily needing an IEP or 504 plan.

Sixth, also in Section 12.10 DOE adds that such additional needs “...are not arranged upon the parent or guardians needs.” This is problematic for parents with disabilities who may have difficulty accessing traditional bus locations. In defining a “qualified individual with a disability,” courts have ruled that the provisions of the Rehabilitation Act and accompanying U.S. Department of Education regulations extend to parents seeking services related to their children’s education. See Rothschild v. Grottenthaler, 907 F.2d 286 (2d Cir. 1990). Further, the federal government clearly intended for the protections of Title II of the ADA to extend to “any qualified individual with a disability involved in any capacity in a public entity's programs, activities, or services,” which in the school context would cover not only a student but “a visitor, spectator, **family member**, or associate of a program participant.” Americans with Disabilities Act Title II Technical Assistance Manual, available at <http://www.ada.gov/taman2.html#II-2.0000> (emphasis added). The U.S. Department of Education’s Office of Civil Rights has also clearly stated that Title II of the ADA applies to “students, **parents**, and other program participants” in schools. Russlyn Ali, Assistant Secretary for Civil Rights, U.S. Department of Education, “Dear Colleague” letter, Jan. 19, 2012, available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201109.pdf> (emphasis added). Council requests that the DOE add clarification to 12.10 such as the following:

“...additional needs “are not arranged upon the parent or guardians needs unless necessary for compliance with the Americans with Disabilities Act or Section 504 of the Rehabilitation Act.”

Council also recommends the inclusion of a requirement that School Districts and Charter Schools notify parents/guardians that transportation accommodations are available and can be included in a 504 plan or IEP. Council has noticed anecdotally that this is not widely known among families.

Thank you for the opportunity to share our comments with you. 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

CC: Whitney Sweeney, State Board of Education
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