



Governor's Advisory Council for Exceptional Citizens (GACEC)
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September 1, 2020

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

RE: 24 DE Reg. 11&13/14 DE Admin. Code 922 & 925 [DOE Proposed Children with Disabilities Subpart A, Purposes and Definitions and Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs Regulation (July 1, 2020)]

Dear Secretary Bunting:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the proposed Delaware Department of Education (DDOE) Regulations on 922 and 925. These regulations were originally published in the Delaware Register of Regulations on February 1, 2020 and Council commented on them at that time after putting together an ad hoc committee for in depth review. DDOE has now decided to republish the regulations for an additional comment period. Overall, Council supports the revised regulations; however, Council would like to share the following observations and recommendations on the regulations that were republished in the Delaware Register of Regulations on July 1, 2020.

Proposed DDOE Regulation on 922 Children with Disabilities Subpart A, Purposes and Definitions, 24 Del. Register of Regulations 11 (July 1, 2020)

First, the largest proposed change is the removal of the definitions pertaining to each educational classification. DDOE explains that this change was made because "the classifications are more appropriately addressed through their eligibility criteria" found within 925. Although this rationale makes sense, there are downsides. Having the definitions listed in 14 Del. Admin. C. §922 not only aligns with how the Individuals with Disabilities Education Act (IDEA) is structured, but it also allows individuals to more quickly and easily find and identify the definitions for each of the educational classifications used. Council recommends that the DDOE keep the definitions for educational classification within 14 Del. Admin. C. §922.

Second, the second largest proposed change is the removal of the definition for “Highly Qualified Special Education Teachers.” The Center for Parent Information & Resources explains

ESSA (Every Student Succeeds Act) eliminated all references to the term “highly qualified” first introduced in the No Child Left Behind Act (NCLB) and then incorporated into the IDEA in the 2004 amendments. In fact, the IDEA highly qualified requirements expanded on those of NCLB, adding several specific requirements regarding special education teachers teaching to alternate achievement standards and special education teachers teaching multiple subjects. By amendment, ESSA eliminates all of these requirements (Sec. 9214 (d)(1)) and replaces them with a single requirement for all special education personnel as follows:

“the qualifications described in subparagraph (A) shall ensure that each person employed as a special education teacher in the State who teaches elementary school, middle school, or secondary school has obtained full State certification as a special education teacher (including participating in an alternate route to certification as a special educator, if such alternate route meets minimum requirements described in section 200.56(a)(2)(ii) of title 34, Code of Federal Regulations, as such section was in effect on November 28, 2008), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except with respect to any teacher teaching in a public charter school who shall meet the requirements set forth in the State’s public charter school law; has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and holds at least a bachelor’s degree.” (Sec. 9214 (d)(2))

This requirement differs only slightly from the ESSA requirement for all teachers and paraprofessionals (or paraeducators). The ESSA requirements for general education teachers and paraprofessionals require that the state provide assurance that all teachers and paraprofessionals working in programs supported by Title I-A funds meet state certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification.

Therefore, the requirement for special education teachers is more specific in that it also requires at least a bachelor’s degree.

Importantly, ESSA retains the NCLB “Parents Right-to-Know” provisions regarding teacher qualifications. These provisions require parents of students in Title I schools to be advised annually of their right to request information on the professional qualifications of their student’s classroom teachers. Schools must also notify parents whenever their student has been assigned, or has been taught for four or more consecutive weeks, by a teacher who does not meet applicable State certification or licensure requirements at the grade level and subject area in which the teacher has been assigned.

(<https://www.parentcenterhub.org/amends-to-idea-essa-fact-sheet/>). When the ESSA amendment was passed, IDEA was not amended to remove all mention of highly qualified teachers, as the DDOE is proposing. Instead, it included language consistent with the new requirement. 300.156(c). The GACEC would like to recommend as was mentioned in the comments submitted on the February proposed regulations, that DDOE amend the definition for “highly qualified special education teachers” to include the new definition used within the IDEA instead of removing the requirement altogether.

Third, DDOE also proposed to change the definition of “child with a disability”; however, the changes made are purely grammatical and have no real impact on the definition itself. Another definitional change involves the term “limited English proficient” or “English learner.” In this instance, DDOE reprinted the definition found in the ESEA rather than just saying it has the same definition. However,

when the definition was reprinted here, it became less clear due to the structure of the definition in the ESEA. Council would like to request that DDOE restructure this particular definition to align with how it is constructed in the ESEA or, alternatively, to delineate more noticeably and explicitly where the words ‘or’ and ‘and’ are located. This issue is seen most clearly in requirement three in the DDOE definition.

Lastly, Council would like to reiterate the following recommendations that the DDOE did not incorporate which were made in response to the first proposed regulations, along with additional commentary. Council recommends that the DDOE address and consider making the following changes:

1. **Concerns regarding assistive technology (AT) devices and services.** Both the IDEA and Delaware regulations specify that AT must be made available to a child with a disability if required (through the development of the individualized education program (IEP) of the student) as a part of any or all of the following three kinds of services: (1) special education; (2) related services; and (3) supplementary aids and services. 34 C.F.R. §300.105; 14 Del. Admin. C. §923.5. The definitions for “related services,” “special education,” and “supplemental aids and services” used in both the IDEA and Delaware regulations do not explicitly reference AT. Council would like to recommend that DDOE revise the definitions of those three terms to specifically provide that they can include AT if determined appropriate by the IEP team. The addition of AT to these definitions would help ensure that IEP teams appropriately consider AT when determining the supports needed for a child to receive a free appropriate public education.

The exclusion of AT in the list of related services is especially curious as this section explicitly specifies the types of technology that are *not* included in the definition of related services. It may be more appropriate to move the service-related elements of this exclusion to the definition of “assistive technology service,” as it already includes an explicit exclusion for surgically implanted devices.

Also, the definition of “universal design” is only provided by reference to the Assistive Technology Act of 1998, as amended. Given the importance of this construct, it would be helpful to have the specific language repeated in this regulation, as was done with other definitions drawn from federal law.

2. **Definition of “speech language pathology services.”** The definition of “speech language pathology” refers to the domains of “*speech and language*” specifically throughout except for one reference to *communicative impairments*. For accuracy, Council would like to recommend that DDOE use the more inclusive “communication impairments” reference when talking about the types of disorders addressed via speech-language pathology services (the American Speech-Language-Hearing Association hyphenates the term).

3. Council would also like to recommend that DDOE include definitions for terms that are not defined in either proposed 14 Del. Admin. C. §922 or §925 or terms which are unclear on their face. These terms include:

- Adaptive behavior
- Atypical development
- Conceptual skills (as a component of adaptive behavior)
- Consideration
- Functional performance
- Interpreter
- Practical skills (as a component of adaptive behavior)
- Print disability
- Social skills (as a component of adaptive behavior)

For adaptive behavior and its related conceptual skills, practical skills, and social skills, Council recommends that DDOE define the terms consistent with the definitions used by the American

Association on Intellectual and Developmental Disabilities (AAIDD). AAIDD defines the terms as follows:

Adaptive behavior is the collection of conceptual, social, and practical skills that are learned and performed by people in their everyday lives.

Conceptual skills: language and literacy; money, time, and number concepts; and self-direction.

Social skills: interpersonal skills, social responsibility, self-esteem, gullibility, naïveté (i.e., wariness), social problem solving, and the ability to follow rules/obey laws and to avoid being victimized.

Practical skills: activities of daily living (personal care), occupational skills, healthcare, travel/transportation, schedules/routines, safety, use of money, use of the telephone.

(<https://www.aaid.org/intellectual-disability/definition>).

Proposed DDOE Regulation on 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs, 24 Del. Register of Regulations 13 (July 1, 2020)

First, DDOE proposes to amend 14 Del. Admin. C. §925, which describes the requirements governing evaluations, eligibility determinations and IEPs. DDOE is proposing to amend this regulation to revise eligibility determination criteria for Autism, Developmental Delay, Deaf-Blind, Emotional Disability, Hearing Impairment, Specific Learning Disability, Intellectual Disability, Orthopedic Impairment, Other Health Impairment, Speech/Language Impairment, Traumatic Brain injury and Visual Impairment including Blindness.

In addition to the proposed changes to the eligibility criteria, DDOE proposes minor changes to the sections governing the general re-evaluation and evaluation procedures. Under re-evaluations, DDOE proposes to include language requiring a public agency to initiate a re-evaluation when data sources show that the child has improved such that the child may no longer require special education and related services. Proposed 14 Del. Admin. C. §925.3. Under the evaluation procedures, DDOE proposes to include a general requirement that all evaluations shall include an observation in the learning environment of the child. Proposed 14 Del. Admin. C. §925.4.2.1. Lastly, DDOE proposes to amend the language in 14 Del. Admin. C. §925.6.1 to reflect that the IEP Team of the student, and not just “a group of qualified professionals and the parent of the child,” shall determine eligibility. Since DDOE is inserting language to reflect that the IEP team shall determine eligibility, it should include the citation for where you can find the definition for “IEP Team.” The first sentence would then read:

“General: Upon completion of the administration of assessments and other evaluation measures, the child’s IEP team, as defined in 14. Del. Admin. C. §8.0, shall determine whether the child is a child with a disability...”

Second, the major proposed changes refer to the eligibility criteria for special education services. Throughout the proposed changes, the DDOE makes general changes to the regulation as a whole, which include structural changes, for more consistency across categories. In making these structural changes, the DDOE includes, under each category, the following: age of eligibility, additional criteria for eligibility, disability-specific evaluation procedures, re-evaluation procedures, documenter, and additional IEP members. The current eligibility criteria for all categories, excluding Visual Impairment including Blindness, have not been altered in any meaningful way since its codification in August 2007. 11 Del. Reg. 184 (August 1, 2007).

This proposed amendment represents the first major proposed overhaul to the eligibility criteria for special education and related services. The proposed changes published in July are largely unchanged from those published in February. Therefore, many of the recommendations that Council previously provided to DDOE will be reiterated here. Council would like to recommend that DDOE incorporate the following changes at this time.

Eligibility Criteria for Autism (14 Del. Admin. C. §925.6.6)

First, DDOE is proposing to overhaul the eligibility criteria for autism to align with the definition of autism as found in the fifth edition of the American Psychiatric Association's Diagnostic and Statistical Manual (DSM V). The proposed language in 14 Del. Admin. C. §925.6.6.1.1-2.4 tracks nearly identically with the language found for autism spectrum disorder (ASD) 2.99 in the DSM-V.

The current DDOE language includes a requirement that the impairment cannot otherwise be attributable to an emotional disability. 14 Del. Admin. C. §925.6.6.1.3.4. The new proposed regulation seeks to include intellectual disability, developmental delay, or other factors found under the special eligibility determination along with emotional disability. Proposed 14 Del. Admin. C. §925.6.6.3. The special rule for eligibility determination is unchanged in the proposed amendment and continues to include lack of appropriate instruction in reading and math, limited English proficiency and otherwise not meeting the eligibility criteria. 14 Del. Admin. C. §925.6.6.2.

The IDEA definitions provide minimum standards that all states must meet, although it allows states the flexibility to adopt more *expansive* definitions of disabilities than those provided as long as the state definition would not exclude children who would be covered under IDEA. GAO-19-348 Special Education. The Delaware proposed 14 Del. Admin. C. §925.6.6 Autism does not meet this standard.

IDEA specifies that:

(1)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.

(iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.
34 C.F.R. § 300.8(c)(1)(i)-(iii).

The DDOE proposed 14 Del. Admin. C. §925.6 fails in the following ways:

- Under proposed §925.6.6.1, the eligibility criteria description is generally consistent with the IDEA until it *requires* that the child exhibit or display deficits in the listed areas. The IDEA does not qualify or place additional requirements on the (1)(i) definition of autism. In doing so, Delaware is excluding children who fail to exhibit one of the deficit areas outlined in proposed §925.6.6.1.1 and §925.6.6.1.2. Council previously made a recommendation for the removal of the qualifying language as used in the February proposed regulations. Although DDOE removed the language “and the child exhibits...” from the February proposed regulations, the additional changes made in this version have the same effect as the February version. Council recommends that the DDOE remove the qualifying language, as it does not comport with the IDEA.
- Proposed §925.6.6.1.1 and §925.6.6.1.2 require that a child have persistent impairments in one (1) or more deficit areas in order to be eligible for special education services.
The IDEA:
 - a. Does not require a specific number of deficits in specific deficit areas
 - b. Does not require deficit areas to be persistent across multiple contexts
 - c. Does not require deficit areas in both social communication/social interaction (proposed §925.6.6.1.1) AND restrictive, repetitive patterns of behavior (proposed §925.6.6.1.2)
 - d. Does not require deficits in restrictive, repetitive patterns of behavior (proposed §925.6.6.1.2)
- In proposed §925.6.6.3, the phrase “cannot be primarily explained by an emotional disability [(ED)], intellectual disability [(ID)], [or] developmental delay [(DD)]” does not align with the

IDEA which only references ED. This may delay timely classification of ASD and the initiation of appropriate and effective interventions because the child may erroneously be classified under DD or ED. This problem is worsened by the fact that the proposed language in this category partially overlaps with the language in ED, which requires fewer criteria to be determined eligible for services. For example, the proposed language in §925.6.6.1.1.3, “*Deficits in developing, maintaining, and understanding relationships*” closely parallels one of the criteria for ED (proposed §925.6.9.1.1.4), which includes “[a]n inability to build or maintain satisfactory interpersonal relationships with peers, teachers and others.” For ED, children only need to meet one criterion from those noted in proposed §925.6.9.1.1 to qualify for services. Further, if a clinician examined the criteria for ED and DD, it could be argued that most children with ASD would meet the new criteria for those classifications.

Eligibility Criteria for Developmental Delay (14 Del. Admin. C. §925.6.7)

Second, there are several differences between the Delaware eligibility criteria and IDEA eligibility criteria relative to the classification of DD. One such discrepancy is that the IDEA does not include reference to an “adverse effect on educational performance.” Because this definition pertains to children ages 3 through 8, “educational performance” may not be the most relevant context for making a determination about the need for special education services. The IDEA uses “who by reason thereof, needs special educational and related services.” 34 C.F.R. §300.8(b). Delaware does still include similar language in its definition for “child with a disability,” but provides a different definition here and in its definition for DD included in proposed 14 Del Admin. C. §922.3. This has, essentially, resulted in two different definitions for DD in the Delaware regulations. Council previously recommended, and would like to recommend again, that DDOE *not* replace the current language that is consistent with the IDEA with “adverse effect on educational performance.”

Furthermore, the criterion of “atypical development” is not defined in the IDEA and is highly subjective. The February proposed regulations replaced “significant delay” with “atypical development.” In the July version of the proposed regulations, DDOE does not replace the term, but rather allows “atypical development” to be used where a child does not exhibit a “significant delay.” Council previously recommended that DDOE keep the current language of “significant difference” and would like to recommend this again or, alternatively, that DDOE define the term.

Proposed §925.6.7.3 also excludes children with significant visual or hearing impairment from receiving the classification of DD. This language is also inconsistent with the IDEA, which would not exclude a child from being determined to have a DD based on the fact that the disability or disabilities include(s) a visual or hearing impairment. 34 C.F.R. §300.8(b).

The proposed changes also include more detailed information concerning the where and what of behavioral observations, but removed the requirement that the assessment shall be “culturally and linguistically sensitive.” Council would like to recommend again that DDOE not remove the requirement that assessments be culturally and linguistically sensitive.

Eligibility Criteria for Deaf-Blind (14 Del. Admin. C. § 925.6.8)

Third, the DDOE proposes to amend the eligibility criteria for deaf-blindness to align more closely with the federal IDEA definition. The proposed change tracks the IDEA definition nearly identically:

“A child with an educational classification of Deaf-Blind is a child who has concomitant hearing and visual impairments, the combination of which has an adverse effect on educational performance...such that the concomitant impairments cause such severe communication and other developmental and educational needs that they cannot be

accommodated in special education programs or related services solely for children with deafness or children with blindness[.]” Proposed 14 Del. Admin. C. §925.6.8.1.

“Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.” 34 C.F.R. §300.8(c)(2).

The DDOE proposes to include language that prohibits an educational classification of deaf-blind where the interference on educational performance can be explained by factors listed in the special rule for eligibility determination found at 14 Del. Admin C. § 925.6.2. DDOE additionally proposes to include specific requirements related to the evaluation documentation and procedures. These requirements include:

6.8.4.1 Documentation of the visual and hearing impairments by a qualified medical professional...; and
6.8.4.2 An audiological evaluation that is no more than six (6) months old, unless otherwise specified by the licensed audiologist.

In this new proposed regulation, DDOE also includes specific requirements for re-evaluation procedures which include:

6.8.5.1 For purposes of continued eligibility determination, the IEP team shall follow the procedures...; and
6.8.5.2 Make every effort to obtain updated documentation related to the student’s visual impairment; and
6.8.5.3 Obtain an audiological evaluation that is no more than one (1) year old, unless otherwise specified by the licensed audiologist.

DDOE proposes to include specific requirements for the documentation of both visual and hearing conditions under the deaf-blind eligibility category. The proposed amendment would require that a medical professional document and certify the impairment. The medical professionals listed include a licensed audiologist, ophthalmologist, optometrist, or neurologist. However, DDOE also includes that if visual acuity is unable to be determined by a licensed optometrist or ophthalmologist, that a functional vision evaluation can be completed by a teacher of the visually impaired or deaf-blind teacher. Council would like to recommend that DDOE strike the reference allowing a functional visual evaluation to be completed by a teacher.

Eligibility Criteria for Emotional Disability (14 Del. Admin. C. §925.6.9)

Fourth, the proposed changes to the eligibility criteria for emotional disability are largely structural rather than substantive. Of note, the age of eligibility was lowered from the fourth birthdate (14 Del. Admin. C. §925.6.9.3) to the third birthdate. Proposed 14 Del. Admin. C. §925.6.9.2. In addition, the proposed amendments explicitly include language that “emotional disability” may include psychiatric disorders. Proposed 14 Del. Admin. C. §925.6.9.1.3. This aligns with the federal IDEA regulations, which explicitly state that “[e]motional disturbance includes schizophrenia.” 34 C.F.R. §300.8(c)(4)(ii).

DDOE also proposes to include a requirement that the documentation be provided by a qualified professional, such as a licensed psychologist or certified school psychologist. This newer proposed version removes not only a licensed psychiatrist from the list, but also removes the language allowing the documentation to be provided by “other qualified professionals when applicable.” Council previously recommended that the licensed psychiatrist remain on the list of appropriate individuals to provide documentation. Council would like to recommend this again as well as recommend that DDOE retain the language allowing documentation to be provided by “other qualified professionals when applicable.”

The major proposed change includes an expansion of the definition for “emotional disability” to include “a pattern of behavior of shorter duration that is severe, intense, or unsafe[.]” Proposed 14 Del. Admin. C. §925.6.9.1. This change will likely catch additional students who are facing crisis and are in need of additional interventions. Council appreciates the expansion.

Eligibility Criteria for Hearing Impairment (14 Del. Admin. C. §925.6.10)

Fifth, the DDOE proposed changes to the eligibility criteria for hearing impairment include the same proposed changes as those described under the eligibility category of deaf-blind. The only difference between the two is that the required members of the IEP team for purposes of eligibility determination do not include a team member from the statewide programs for Deaf-Blind. Council would suggest the DDOE reconsider this exclusion.

Eligibility Criteria for Specific Learning Disability (14 Del. Admin. C. §925.6.11)

Sixth, the proposed changes to the eligibility criteria for specific learning disability (SLD) are essentially structural rather than substantive. The DDOE proposes to incorporate the current 925.7-11 into the proposed 925.6.11. This change would ensure that all relevant regulations concerning the identification, evaluation, and eligibility criteria for children with specific learning disabilities are not spread throughout the entire regulation.

The single major substantive change is the revised definition for “specific learning disability,” found at 14 Del. Admin. C. §925.6.11.1. The proposed eligibility criteria require that the child not be making sufficient progress to meet age or state-approved grade levels standards. This is not as expansive as the IDEA, which requires consideration of whether:

- (i)[t]he child does not achieve adequately for the child’s age or to meet State-approved grade-level standards consistent with § 300.309(a)(1); and
- (ii) (A)[t]he child does not make sufficient progress to meet age or State-approved grade-level standards consistent with § 300.309(a)(2)(i); **or**
 - (B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards or intellectual development consistent with §300.309(a)(2)(ii).

34 C.F.R. §300.311(a)(5)(*emphasis added*). The DDOE proposed eligibility criteria do not include language comparable to 34 C.F.R. §300.311(a)(5)(ii)(B), which provides an additional route to eligibility. Council would like to reiterate our recommendation that the DDOE align its eligibility requirements to be consistent with the IDEA.

Proposed 14 Del. Admin. C. §925.6.11.2 specifies that eligibility for the SLD classification begins at the fifth birthday, yet IDEA includes ages 3-21, inclusive, and would not exclude a child from consideration as having an SLD because the child has not yet reached his/her fifth birthday. Council would like to again recommend that DDOE reconsider its decision to preclude children aged 3 and 4 from being eligible under SLD. Council recognizes and asks that the DDOE recognize that different assessment techniques may be required in making these determinations and would not exclude a child from consideration as having an SLD eligibility for children aged 3 and 4.

Eligibility Criteria for Intellectual Disability (14 Del. Admin. C. § 925.6.12)

Seventh, the proposed eligibility criteria for Intellectual Disability are largely structural rather than substantive. Of note, the proposed definition for intellectual disability was amended to align with the federal IDEA definition and the updated definition published by the American Association on Intellectual and Developmental Disabilities (AAIDD). The proposed definition tracks nearly identically with the federal definition and incorporates additional pieces from AAIDD definition. The proposed criteria for

mild, moderate, and severe intellectual disability are largely unchanged; however, the DDOE proposes to include limitations in adaptive behavior to all three categories, and not just severe. In the proposed changes, DDOE removes the explanation for what each adaptive behavior category is. Council would like to recommend that DDOE include what is covered by conceptual skills, social adaptive skills and practical adaptive skills. Council suggests that the DDOE use the explanations provided by the AAIDD:

Adaptive behavior is the collection of conceptual, social, and practical skills that are learned and performed by people in their everyday lives.

Conceptual skills—language and literacy; money, time, and number concepts; and self-direction.

Social skills—interpersonal skills, social responsibility, self-esteem, gullibility, naïveté (i.e., wariness), social problem solving, and the ability to follow rules/obey laws and to avoid being victimized.

Practical skills—activities of daily living (personal care), occupational skills, healthcare, travel/transportation, schedules/routines, safety, use of money, use of the telephone.

(<https://www.aaid.org/intellectual-disability/definition>). These can either be provided within this section or, alternatively, in 14 Del. Admin. C. §922 as previously discussed.

Lastly, the DDOE proposed amendments include lowering the age of eligibility from the 4th birthdate to the 3rd birthdate and requires that a certified school psychologist be a member of the IEP Team for purposes of eligibility determination. This change merits the approval of the Council.

Eligibility Criteria for Orthopedic Impairment (14 Del. Admin. C. § 925.6.13)

Eighth, the proposed eligibility criteria for orthopedic impairment are reworded but remain substantively the same as the current language.

Eligibility Criteria for Other Health Impairment (14 Del. Admin. C. § 925.6.14)

Ninth, the proposed eligibility criteria for Other Health Impairment are largely structural rather than substantive. Of note, the proposed definition was amended to align with the federal IDEA definition by including a list of additional chronic or acute conditions such as asthma, diabetes, epilepsy, and others. It was also amended to align with the DSM V criteria for Attention Deficit Hyperactivity Disorder (ADHD). Council appreciates this amendment.

The proposed changes under additional criteria for eligibility require that in the case of ADHD specifically, the interference cannot primarily be explained by another mental disorder (such as anxiety, depression, etc.) and the symptoms do not occur only during the course of schizophrenia or another psychotic disorder.

In addition, the proposed evaluation procedures include a requirement that documentation of the health impairment be provided by a qualified medical professional such as a medical doctor, licensed nurse practitioner, or licensed physician's assistant, and in the case of ADHD, a certified school psychologist or licensed psychologist. Lastly, for purposes of eligibility determination, the DDOE proposes that a certified school psychologist and school nurse are required members of the IEP Team.

Eligibility Criteria for Speech/Language Impairment (14 Del. Admin. C. § 925.6.15)

Tenth, the DDOE proposes a complete overhaul of the eligibility criteria for Speech/Language Impairment (SLI). These proposed changes bring the general definition in line with the updated federal IDEA definition found at 34 C.F.R. §300.8(c)(11), although there seem to be significant issues with the new proposed definition. The DDOE proposes to include additional requirements to the eligibility criteria

not found in the IDEA definition and expands on the current definition requiring a finding of an articulation disorder, language disorder, dysfluent speech, or a voice disorder.

In the elaboration of what qualifies as a communication impairment, the reference to “Articulation/Connected speech intelligibility” in proposed 14 Del. Admin. C. §925.6.15.1.1 is confusing because the two constructs are not mutually exclusive. It would be sufficient to say “Speech intelligibility” or use the term-of-art in speech-language pathology, which is “speech sound production.” Because the proposed §925.6.15.1.3 extends the definition of expressive language impairment to those who use non-speech modes of communication, the reference to “the speaker’s ability to communicate” would more appropriately be to “the child’s ability to communicate” so as not to exclude those who cannot rely on speech for expressive purposes.

Also, the description of evaluation procedures specified in §925.6.15.4 is inadequate to cover the range of communication impairments specified in proposed §925.6.15. More specifically, proposed §925.6.15.4.2 refers to “Criterion referenced measures” only, yet speech-language pathologists employ both norm-referenced and criterion-referenced measures routinely. Council would like to again recommend that DDOE include norm-referenced measures in its evaluation procedures.

Eligibility Criteria for Traumatic Brain Injury (14 Del. Admin. C. §925.6.16)

Eleventh, in general, the proposed changes to the eligibility criteria for traumatic brain injury are similar to the current criteria, although reworded to align with the new proposed structure of the regulation as a whole. Substantive changes include a removal of the requirement that the TBI limit one or more major activities of daily living. The proposed changes also define TBI to include not only external causes, but internal medical conditions as well. Under the proposed changes, additional required members of the IEP Team for purposes of eligibility determination would include a certified school psychologist and a school nurse. These amendments are also appreciated.

Eligibility Criteria for Visual Impairment Including Blindness (14 Del. Admin. C. §925.6.17)

Twelfth, the DDOE proposed changes to the eligibility criteria for visual impairment including blindness include the same proposed changes as those described under the eligibility category of deaf-blind. The only difference between the two is that the required members of the IEP team for purposes of eligibility determination include an orientation and mobility specialist, teacher of students with visual impairments, and a certified school psychologist.

The proposed changes remain consistent with recommendations that Council previously provided to DDOE regarding the eligibility criteria for Visual Impairment Including Blindness. 11 Del. Register of Regulations 184 (August 1, 2007).

Parent Participation (14 Del. Admin. C. §925.9)

Thirteenth, Council recommends that proposed 14 Del. Admin. C. §925.9.6.4 or §922 regulations should define the term “interpreter.” For example, the U.S. Department of Education Policy Directive promulgated on September 4, 2012 defines a qualified translator or interpreter as “an in-house or contracted translator or interpreter who has demonstrated competence to interpret or translate through court certification or through other professional language skills assessment certification.” <https://www2.ed.gov/policy/gen/leg/foia/acsocroco1102.pdf>. The lack of clarity in this regard has led to individuals providing interpretation services who are neither familiar with the language used during IEP meetings nor aware of the expectation that interpreters must refrain from modifying the content of the message being translated. Members of the Disabilities Law Program (DLP) and the GACEC are aware of several instances where this has been the case and has caused a breakdown between the school and the parent or has led to inappropriate information being communicated.

Council would like to recommend that DDOE include language specifically that the child with a disability cannot be the interpreter for the IEP meeting. Council is aware of instances where the child with a disability for whom the meeting is being held has been the interpreter for the meeting. This too has caused breakdowns in communication between the school and parent and has led to inappropriate or inaccurate information being communicated between the parties. This practice in particular is of concern given the role of all persons involved.

Least Restrictive Environment (LRE) (14 Del. Admin. C. §925.13)

Fourteenth, regarding proposed 14 Del. Admin. C. §925.13, Council would like to recommend including a reference to the LRE continuum requirements described in §923.15 for greater clarity.

Finally, Council would recommend that the DDOE review the proposed amendment as a whole to identify and fix any errors related to internal citations and references.

Thank you for the opportunity to share our observations and recommendations with you. Please contact me or Wendy Strauss if you have any questions.

Respectfully,

Ann C Fisher

Ann C. Fisher
Chairperson

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