



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

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March 30, 2011

Ms. Susan K. Haberstroh
Education Associate
Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

RE: 14 DE Reg. 851 [DOE Proposed Resident Advisor Regulation]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) and Council on Deaf & Hard of Hearing Equality (CODHHE) have reviewed the Department of Education's (DOE's) proposal to amend its *Credentials for Resident Advisor in the Statewide Programs for Autism and the Deaf and Hard of Hearing* regulation. The regulation was published as 14 DE Reg. 851 in the March 1, 2011 issue of the Register of Regulations. The Councils have the following observations.

First, the regulation authorizes issuance of a permit to serve as a resident advisor in the Statewide Program for the Deaf/Hard of Hearing to persons with no ASL capability or special communication skills. The Deaf or Hard of Hearing Child's Bill of Rights Act contemplates the "provision of optimal, direct, and ongoing language access to ...interpreters...and other special education personnel who are knowledgeable due to specific training and who are proficient in the child's primary communication mode or language." See Title 14 Del.C. §3112(c)(4). The Act also envisions the provision of "adult models of the child's communication mode or language." See Title 14 Del.C. §3112(c)(3). This is ostensibly a major deficiency in the regulation. Section 504 contemplates the provision of qualified personnel. See, e.g., Region IX LOF to Montebello (CA) School District, 20 IDELR 388, 390-391 (May 28, 1993) [prevalent use of substitute teachers without special education training violates §504 and ADA]. Likewise, the IDEA requires the DOE to adopt standards requiring personnel with appropriate training and skills:

The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that these personnel have the content knowledge and skills to serve children with disabilities.

34 C.F.R. §300.156.

Parenthetically, the absence of any training or skill standard for residential DAP staff should also be reassessed. See, e.g., the attached August 16 and August 23, 2010 News Journal articles which document concerns with the operation of the DAP homes. DAP home residents present very complex and challenging behaviors requiring highly trained staff.

Second, the Councils recommend deletion of “disloyalty” as a type of unfitness in the definition of “unfit” and §§6.1.4 and 7.1. Someone is not “unfit” to serve as an interpreter/tutor simply because he/she is applying for a job with another employer, is a union representative, or is a “whistleblower”.

Third, the regulation is inconsistent in its capitalization of “permit”. Compare, e.g. §§6.1, 7.1, 7.2 (not capitalized) with §§5.0, 6.1.3, and 7.1 (capitalized). Indeed, in §7.1, the word is capitalized once and “uncapitalized” twice.

Fourth, §6.1.3 is overbroad. It literally requires denial of a permit if an individual has “had a Permit, certificate or license revoked in another jurisdiction”. There is no requirement that the revocation be based on “cause”. For example, a permit could have simply been revoked because an individual let it lapse, did not submit renewal materials, etc. Compare the deleted version of this provision which required the revocation to be based on “cause”:

6.2.2 The applicant has had an educator Permit, certificate or license revoked in another jurisdiction for immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty of falsification of credentials.

Fifth, in §6.1.4, consider substituting “unfitness” for “immorality...credentials” since the definition of “unfit” in §2.0 incorporates the listed bases. The same substitution could be used in §7.1.

Sixth, §5.0 requires disclosure of criminal conviction history. SCPD endorses this provision. Consistent with the attached January 31, 2001 article, residential Sterck students are at risk if staff are not adequately screened.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulation.

Sincerely,



Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities



Loretta Sarro, Chairperson
Council on Deaf & Hard of Hearing
Equality

cc: The Honorable Lillian Lowery
Dr. Teri Quinn Gray
Ms. Martha Toomey
Ms. Paula Fontello, Esq.
Ms. Terry Hickey, Esq.
Mr. John Hindman, Esq.
Mr. Charlie Michels
Mr. Brian Hartman, Esq.
Ms. Julie Johnson, DE Families for Hands & Voices
Ms. Della Thomas, Statewide Programs
Council on Deaf & Hard of Hearing Equality
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

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Using group homes causes rift

Director says residential service out of district's scope

By MIKE CHALMERS • The News Journal • August 16, 2010

Lia Park has autism, and by age 15, she still couldn't speak, couldn't use the bathroom and had a habit of severely gouging her own eye.

"Somebody had to always be with her," said her mother, Patrice Park. "She was dependent on us for all of her care."

Lia's frustrated parents turned to a special service offered through the Delaware Autism Program, where she was enrolled as a student. For two weeks, Lia lived in a Newark group home, where staffers successfully taught her to use the toilet.

"It was just an awesome experience," Patrice Park said. "It was part of her education program. It wasn't baby-sitting or putting her away somewhere."

The lessons worked so well that her parents began sending her to the home frequently to work on other behaviors. For the past six years, Lia regularly spent as many as five nights a week at one of DAP's three homes.

That's a problem, said DAP director Vincent Winterling.

The service isn't held to the same training, licensing and accreditation standards as another group home, he said. And the Christina School District, which hosts DAP in New Castle County, isn't supposed to run a residential treatment program, he said.

"What in God's name is the school district doing providing residential treatment?" Winterling said.

"We're not accountable, we're not licensed," he said. "Nobody really knows what the program is. I'm looking at it thinking, 'Come on, this is crazy.'"

Winterling wants to eliminate overnight stays, currently offered to only seven or eight of DAP's more than 700 children statewide. But Delaware parents and autism advocates are resisting.

"If it's not working, let's fix it," said Kim Herbert, of Pike Creek, whose 7-year-old twin sons have autism.

"My boys might need it someday, so I don't want to see it go anywhere," said Herbert, president of DAP's parent advisory council. "If we get rid of the residential home, there's no getting it back."

The Christina School Board has not made any decisions on Winterling's recommendations, said Wendy Lapham, spokeswoman for Christina School District.

Such residential treatment programs are falling out of favor among most autism advocates and researchers, said Jeff Sell, vice president of advocacy and public policy for the Autism Society, a national advocacy group. The trend is now toward offering services in the community or a family's home because it is less expensive and more effective, he said.

Residential programs "are what everybody wants to avoid," said Sell, who has twin 16-year-old sons with autism.

Services now offered by DAP's homes could be

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provided by behavioral experts who come to a family's home, Sell said.

Winterling said the homes could still be used to teach life skills to autistic children, just not overnight. He has proposed the service be phased out over the next year.

Fifteen students, from ages 12 to 21, currently receive the service at the homes. About half of them, including Lia Park, are leaving this month because they have turned 21, Winterling said.

"For the 12-year-olds, we can't be here for nine more years," Winterling said. "Something else is needed in your family's life, and the school district can't be it."

Winterling called the current program "a risk-management nightmare" because it doesn't meet the industry's standards for group homes. That leaves the program, its staff, the school district and the state open to legal blame if a student is injured or killed in an accident at one of the homes, he said.

"This is no longer the 30-year-ago world where you just gave your child and said, 'Take care of my kid,'" Winterling said. "We live in a litigious society."

Also, the three homes are in Newark, making the service impractical for families living downstate, he said.

The service should continue until a better one is in place, said Theda Ellis, executive director of Autism Delaware, an advocacy organization aimed at helping families affected by the disorder.

"What concerns me is closing this program without having an alternative," Ellis said. "We need some time to figure out who can do this."

Autism is a complex neurological disorder that affects the way a person communicates and interacts with others. It affects about one out of every 110 U. S. children, according to the Centers for Disease Control and Prevention.

Autistic children pose challenges for their families, parents said, but their issues are compounded when they reach adolescence.

Deanna Principe, of New Castle, wants the service to be available if her autistic daughter, now 11, needs it.

"It has turned into something it wasn't meant to be," Principe said. "But there's nothing else in place right now. So if that goes away, these families are left with nothing."

DAP, the nation's only statewide public school program for children with autism, started the residential service in 1985 when Marie-Anne Aghazadian and other parents pressed for an alternative to expensive, out-of-state group homes for children with difficult behavioral issues.

"We were a small group of parents who were able to win over a few legislators," Aghazadian said.

Aghazadian's son, Stefan, now 39, spent time in the homes to shower, dress himself and make basic microwave meals. He now lives in an adult group home.

"It allowed us to have a more typical family life," she said. "If he hadn't learned them in that setting, he would have never learned them."

Families with severely autistic children might have to accept that their child needs a full-time group home, Winterling said. There are no such homes for children in Delaware, so that means placing them in Pennsylvania, New Jersey or another state, he said.

The homes cost \$150,000 to \$200,000 a year for

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each child, Winterling said. The state would have to pick up much of that cost.

"Is it a high cost? Yes, it is," Winterling said. "But we've got to have the discussion about what we're doing with these kids. Nobody's going to be put on the street."

Ellis said Delaware does not have money to put into residential services, and in this political and economic climate, state residents and legislators are unlikely to raise taxes to pay for the services.

"I don't disagree with Vince, but I don't think it's going to happen," Ellis said.

Stacey O'Rourke, of Pike Creek, wants the service to remain in place if her 5-year-old daughter and twin 3-year-old girls, all with autism, need it.

But only if it is safe, she said.

"To have a school manage a residential facility is a lot," O'Rourke said.

Contact Mike Chalmers at 324-2790 or mchalmers@delawareonline.com.



Purchase this Photo

Patrice Park helps daughter Lia put on her shoes. For six years Lia Park spent as many as five nights a week at one of the Delaware Autism Program's three homes — and that's a problem, DAP's director said. (The News Journal/GINGER WALL)

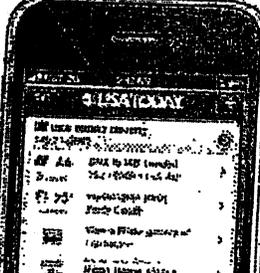
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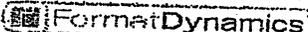
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Sammy Principe, 11, swims at Camp Manito in Wilmington on Thursday. Sammy's mom, Deanna, wants the DAP service to remain. "If that goes away, these families are left with nothing," she said. (The News Journal/JENNIFER CORBETT)



Purchase this Photo

Deanna Principe helps daughter Sammy, 11, put on her backpack while picking her up at the Variety Autism Camp held at Camp Manito in Wilmington on Thursday. (The News Journal/JENNIFER CORBETT)

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Mom Dilemma #36:

Your daughter insists on wearing her princess costume to the grocery store. Allow it or not?

YES, at least she's dressed!

NO, I have some rules!

momstake me

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7-23-13 #5

District must not give up on autistic students

Last Monday's article, "Using group homes causes rift," on the Delaware Autism Program (DAP) group homes hit on many key points.

It should be recognized that the Legislature, the Delaware voice THEDA M. ELLIS

Christina School District and parents agreed 20 years ago that locally

run group homes were the most cost-effective way to address the needs of these challenged students.

The program extends the school day, teaching specific educational goals to children who have not been able to learn these

goals during the day in school or at home. Initially, the DAP also provided parent training so students in the residential program would be able to successfully transition back home.

That training never fully materialized as initially envisioned and has subsequently been reduced as the number of students increased.

I agree with Dr. Winterling that the group homes should be licensed and certified. Christina signed a memorandum of agreement four years ago that it would do that - it could and should complete that process.

DAP group home staff consists of certified teach-

ers and paraprofessionals who are typically better paid than staff of typical residential programs, thus they should have even more skills than a standard residential program.

Concerning the argument that residential services are not an appropriate public education service, there is a rich history of school with residential services for other unique disabilities, including Christina's Sterck School for the Deaf.

The reason for group homes for children with autism may be different, but the need is no less acute. So the fact that the DAP group homes are managed by public education is

not really the issue.

The issue is will.

We have 10-25 children who are going to need the additional support that residential programming provides. To do it in the home would be ideal, but

Delaware does not have the professional expertise nor the funding to do this. Sending children out of state is not the answer and is not cost-efficient. Autism Delaware is not saying that the DAP must

run these homes, but we do believe there must be an in-state program for children with autism who require a residential component.

Theda M. Ellis is executive director of Autism Delaware.

School worker charged

Deaf student, 16, allegedly victimized

By RYAN CORMIER
Staff reporter

An employee of a school for the deaf in Ogletown was charged Tuesday with repeatedly having unlawful sexual contact with a 16-year-old male student.

Brian Connor, 26, also is accused of threatening the student with official reprimands if he did not comply, state police said.



Connor, of Golf View Drive in Christiansiana, was charged with one count of sexual extortion and 15 counts of unlawful sexual contact. He was released on \$5,250 bail Tuesday.

Police said the residential adviser is accused of performing sexual acts on the deaf student at the Margaret S. Sterck School for the Deaf at least four times a week from the beginning of September to early December.

"At this time, we are not aware of any other instances," said Lt. Tim Winstead, spokesman for the state police. "But the investigation is ongoing."

During the final encounter, which allegedly occurred Dec. 4, Connor threatened the student with an administrative reprimand if he did not submit, Detective Timothy Kerstetter stated in court documents.

Connor, who also is deaf, has been on paid administrative leave from the school since the investigation into the incidents began in early December, said Lisa McVey, spokeswoman for the Christiansiana School District.

McVey said she did not know exactly what Connor's job entailed but that it did not involve teaching.

Staff members at the school were told about the arrest Tuesday and McVey said parents would be notified today.

Police said the investigation began after a faculty member informed the school's administration.

Previously, Connor had been a student at the school and has been employed there for more than a year, police said.

Of the 150 students who attend the school, 30, including the victim, live at the school during the week, police said.

The incidents occurred after school hours on school grounds, police said.

Police ask anyone with information about any similar incidents to call Troop 2 at 323-4408.

Reach Ryan Cormier at 324-2771 or

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