



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: March 29, 2016

TO: All Members of the Delaware House of Representatives

FROM: Ms. ^{DM-P / ARR} Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: S.B. 180 (Student "Age of Majority" Bill)

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. 180 which provides procedures to ensure that each child with a disability who has reached age 18 has an identified educational decision-maker to exercise rights under this chapter. SCPD endorses the proposed legislation and has the following observations.

As background, a federal regulation (34 C.F.R. 300.520) requires states to address decision-making for students with disabilities reaching adulthood who may lack capacity to exercise special education rights:

- (b) Special rule. A State must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if, under State law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program.

This legislation implements the federal regulation by requiring the State Department of Education to adopt regulations consistent with minimum standards in the bill (lines 22-24). If it appears a child turning 18 may lack capacity, but has no court-appointed guardian, the IEP team is authorized to make the determination of capacity (lines 27-32). In such cases, a school psychologist must participate in the IEP team decision (lines 33-36). The school psychologist must have interviewed the child AND either conducted an evaluation or reviewed evaluation results from another school psychologist. Both the child and parent are invited to participate in the IEP team meeting (lines 37-38). If the child is determined to lack capacity, the IEP team appoints an individual to serve as the educational decision-maker in the following descending

order of priority: 1) willing and available biological or adoptive parent; and 2) willing and available relative (lines 43-46). If neither is available, the team issues a referral for appointment of an educational surrogate parent under existing law (lines 47-48).

The proposed legislation has been endorsed by the Department of Education and the Department's regulations would be developed in consultation with the Governor's Advisory Council for Exceptional Citizens.

Thank you for your consideration and please contact SCPD if you have any questions regarding our endorsement of the proposed legislation.

cc: Delaware State Senate
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

SB 180 student age of majority bill 3-29-16