



8/24/2020

To whom it may concern:

On behalf of the Delaware Association of School Psychologists (DASP), we have reviewed the new proposed revisions to 14 Del.C. Section 122(d), 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. We are appreciative of the work that went into the revisions made since the last public comment period closed in response to concerns raised by this association and others. In the spirit of continuous improvement, we offer the following comments in response to the recently proposed revisions to this section of the administrative code.

#### General comments

Overall, we are supportive of the restructuring of sections 6.6 – 6.18 that clarify not only the criteria for each educational classification, but also the documentation required as evidence of meeting that criteria and who can provide that documentation. This consistent structure across all the educational classifications makes the regulations easier to read.

We did have some questions about the intention of the language under “additional criteria for eligibility” (e.g., 6.6.3, 6.8.3, etc.) In these sections, it describes what constitutes meeting criteria for that educational classification as the “primary” classification. All of these refer back to the “special rule for eligibility determination” in 925.6.2. First, it appears that this reference should actually be referring the reader to 925.6.3, due to changes in renumbering in that section. Second, is this clause in 6.6.3, etc. intended to establish a hierarchy of educational classifications in cases where the students meet multiple classifications (e.g., if a student has a sensory impairment, a motor impairment, and a cognitive impairment, the sensory impairment is always listed as the primary classification, or if a student has Autism and a Specific Learning Disability, Autism is always listed as the primary classification)? We seek some additional clarification, perhaps through implementation guidance, about how to interpret this section.

Additionally, we would like the Department to consider delaying implementation of these regulatory changes until next school year. Given the many challenges we all face this year due to the pandemic, including the need to rethink even the simplest aspects of our jobs and the effort to remain nimble enough to pivot from one entirely different plan to another at short notice, we are concerned about the additional demand posed by the roll-out of new eligibility regulations.

#### Autism

We continue to be concerned about the proposed reduction in required symptoms in order to determine eligibility for an educational classification of Autism, especially with the addition of the “currently or by history” qualifier which would allow that single symptom criteria to be met by a child not currently demonstrating that symptom. By requiring only one symptom of social

communication/interaction deficits, and only one symptom of restricted, repetitive behavior, we are concerned that this opens the door for significant overidentification of this educational classification. In particular, it substantially blurs the line between Autism and Emotional Disability. Some behaviors associated with Autism are similar to those seen in children who have experienced significant trauma, especially children who have a history of abuse/neglect. Additional criteria required for a DSM-V diagnosis of Autism (three symptoms of social communication/social interaction deficits, and at least two symptoms of restricted/repetitive patterns of behavior) are necessary to rule out the presence of an Emotional Disability as being the reason for those symptoms.

For example, a child who has experienced significant food insecurity may insist upon unusual routines involving food such as hoarding food in their backpack and/or desk, and tantrumming if their ability to stash food is interrupted or disturbed. A child whose guardian's moods are highly variable and unpredictable (e.g., if the child does something wrong they never know whether they will be instantly forgiven without incident or physically/emotionally abused for the transgression) may have difficulty developing/maintaining/understanding relationships with others. While each of these may be a symptom of restricted/repetitive behavior or social communication/interaction deficits, these should not be considered to be indicative of autism in and of themselves. DASP proposes that the additional symptoms required by the DSM-V's definition of Autism would help more clearly delineate behaviors associated with trauma from behaviors associated with Autism in these cases.

DASP continues to be concerned that the proposed regulations in their current form will result in significant overidentification of Autism due to the small number of symptoms required to meet criteria, given that these criteria for Autism could be hypothetically met not just by children with Autism, but also by children with a significant history of trauma. We are also concerned that there will be difficulty determining subsequent ineligibility under the educational classification of Autism if it is later determined to be inappropriate, given the "by history" clause. We respectfully request consideration to require a higher symptom count consistent with the DSM-V, in order to assist with the ruling out of an Emotional Disability.

#### Emotional Disability

We are appreciative of the removal of the proposed language referring to "a pattern of behavior of shorter duration that is severe, intense and/or unsafe." This minimizes the risk of overidentification, particularly with young children initially entering a school setting.

#### Learning Disability

DASP is appreciative of the proposed revisions to this section that clarify the school psychologist's role in providing documentation of the Specific Learning Disability during the evaluation process, as well as being a member of the eligibility team.

#### Intellectual Disability

We are appreciative of the alignment of the definition of adaptive skills in the proposed regulations with the definition of adaptive skills from the American Association on Intellectual and Developmental Disabilities (AAIDD) and the DSM-V, in terms of the impairment in a superordinate skill domain (i.e., conceptual, social, or practical skills) instead of two or more skill areas. However, it is important to define the skills that comprise these domains, as not all of the adaptive skill rating scales use those exact same terms. For example, the Vineland Adaptive Behavior Rating Scales - 2<sup>nd</sup> Edition, which is typically used to assess adaptive functioning in students with moderate-to-severe intellectual disabilities, particularly if they have concomitant sensory or orthopedic disabilities, has 3 domains under the overall

composite score that it terms as “Communication,” “Daily Living Skills,” and “Socialization.” By not providing a working definition of what meets Delaware’s criteria of conceptual, social, and practical skills domains, we are concerned that the regulations could be interpreted as endorsing only those adaptive behavior rating scales that use those specific terms to define their domains. We recommend including the following definitions of these domains as per 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.*

#### Other Health Impairment

We greatly appreciate the clarification in required documentation for Attention Deficit Hyperactivity Disorder (ADHD) in 6.14.6, specifically in reference to the school psychologist’s role in providing documentation of an Other Health Impairment for children who display “behaviors consistent with ADHD.” This addresses the concerns we raised in our previous public comment in regards to confusion about whether school psychologists were medically diagnosing ADHD.

The Delaware Association of School Psychologists is appreciative of the herculean effort clearly evident in the significant updates to these regulations, and is appreciative of the Department’s responsiveness to feedback about these updates. We remain available for consultation regarding these proposed regulations.

Sincerely,  
The Delaware Association of School Psychologists (DASP)

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