



July 17, 2014

Via U.S. Mail

Ms. Susan Haberstroh
Associate Secretary
Education Supports & Innovative Practices Branch
Department of Education
401 Federal Street, Suite 2
Dover, Delaware 19901

Re: Proposed Amendments to 930 Supportive Instruction (Homebound) Regulation

Dear Associate Secretary Haberstroh:

On behalf of the National Women's Law Center, an organization that for over 40 years has worked to expand the possibilities for women and girls in the areas of education and employment, family economic security, and health, we write to express support for the proposed amendments to Delaware Administrative Code Section 930, on Supportive Instruction (Homebound). We applaud your efforts to support the academic success of Delaware's pregnant and parenting students and to help bring your schools into compliance with Title IX of the Education Amendments Act of 1972.

I. Title IX requires that students who are pregnant or have related medical conditions get equal access to Homebound Services.

The Delaware Department of Education (DDOE) has an obligation to ensure compliance with federal civil rights laws, including Title IX and its supporting regulations. Title IX provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). The law applies to all forms of sex discrimination, including discrimination on the basis of pregnancy and childbirth. One of the federal regulations addressing schools' obligations to pregnant and parenting students under Title IX expressly states:

A recipient [an educational institution receiving federal funds] shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary

With the law on your side, great things are possible.

11 Dupont Circle NW ■ Suite 800 ■ Washington, DC 20036 ■ 202.588.5180 ■ 202.588.5185 Fax ■ www.nwlc.org

disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

34 C.F.R. § 106.40(b)(4). Accordingly, it is a violation of federal law for Delaware's public school system to categorically deny eligibility for homebound instruction to students experiencing pregnancy or related medical conditions.

II. The proposed regulatory language is necessary to bring Section 930 into compliance with Title IX.

Current DDOE regulations preclude students with "normal pregnancies . . . unless there are complications" from accessing homebound instruction, and explicitly limit homebound supportive instruction for students recovering from childbirth to six weeks. These provisions violate Title IX because: (1) there may be circumstances in which a student with a "normal" pregnancy or delivery, even without "complications," might have a medical need for homebound, supportive instruction; (2) the six-week limitation does not apply to other students qualifying for homebound, supportive instruction; and (3) the arbitrary six-week limitation runs counter to Title IX regulations, which specifically state that absences must be excused for as long as "medically necessary."

The proposed regulation eliminates the problematic provision entirely and substitutes it with language stating that students can qualify for supportive instruction during absences related to pregnancy, childbirth, and related medical conditions. The proposed substitute language makes it unmistakably clear that pregnancy-related absences must be excused for as long as deemed medically necessary and that students are eligible for supportive instruction for as long as medically necessary to recover from childbirth or another pregnancy-related medical condition. We applaud the DDOE for making this small but important change to comply with federal civil rights law.

III. The proposed rule provides crucial supportive instruction to Delaware's pregnant and parenting students.

According to the U.S. Department of Health and Human Services' most recent data, Delaware has the seventh highest rate of teen pregnancy in the United States.¹ In 2008, with 81 pregnancies for every 1000 teenage females ages 15-19, Delaware had almost 20 percent more teen pregnancies than the national average.² While the rate of teen pregnancy continues to fall across the country, Delaware's rate of decrease also lags behind the national average.³

With a significant number of Delaware's high school students experiencing pregnancy before they graduate, the enrollment and success of pregnant and parenting students in public schools should be a state priority. According to a 2010 study by *Child Trends*, only about 50

¹ U.S. Dep't of Health & Human Services, Delaware Adolescent Reproductive Health Facts (August 2013), available at <http://www.hhs.gov/ash/oah/adolescent-health-topics/reproductive-health/states/de.html>.

² *Id.*

³ *Id.*

percent of teen mothers get a high school diploma by age 22, compared to 89 percent of women who did not have a child during their teen years, and one-third of teen mothers never get a diploma or a GED.⁴ It is critical that the Delaware Administrative Code ensure pregnant and parenting students equal access to homebound instruction, not only to meet the obligations of Title IX and its regulations, but also to support and encourage the success of Delaware's pregnant and parenting students.

* * * * *

We appreciate the steps Delaware is taking to come into compliance with Title IX and support its pregnant and parenting students, and we urge the swift implementation of these important changes. While necessary, however, these changes alone are not sufficient; dissemination to and training for administrators and educators will be critically important to ensure that the policy changes are widely understood and properly implemented, and that schools understand the comprehensive requirements of Title IX. We recommend that such training also include information on the range of barriers that pregnant and parenting students confront and ways that school staff can help and encourage them, which will go a long way toward improving their likelihood of success.

If you have any questions, please feel free to contact Lara S. Kaufmann at (202) 588-5180 or lkaufmann@nwlc.org.

Sincerely,



Lara S. Kaufmann
Senior Counsel & Director of
Education Policy for At-Risk Students

⁴ Kate Perper, et. al., *Diploma Attainment Among Teen Mothers*, Child Trends (January 2010), http://childtrends.org/wp-content/uploads/2010/01/child_trends-2010_01_22_FS_diplomaattainment.pdf.