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STATE COUNCIL FOR PERSONS WITH DISABILITIES
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November 20, 2009

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

RE: 13 DE Reg. 574 [DOE Citizen Budget Oversight Committee Regulation]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOEs) proposal to adopt a Citizen Budget Oversight Committee regulation published as 13 DE Reg. 574 in the November 1, 2009 issue of the Register of Regulations. Legislation (H.S. 1 for H.B. 119) was enacted this summer which requires the DOE to issue a regulation by November 1, 2009 establishing procedures for appointment of citizen budget oversight committees. Council has the following observations.

First, the synopsis to the regulation (13 DE Reg. at 574) touts the Department's solicitation of "comments from the district business managers and charter directors" in developing the standards. Soliciting input solely from the officials subject to oversight has ostensibly resulted in rather weak oversight standards.

Second, the statute recites that "(t)he Department of Education shall provide training to committee members." The Department's implementation of this requirement is anemic, at best. Consider the following:

A. Two hours of training is deemed sufficient to develop competency in the budget process and timelines; rules of budgeting State, local, and federal funds; the State Financial Management system; and reporting requirements. [Section 5.0].

B. The DOE model policy contemplates a two year term. [Section 4.4.4.1.3] However, a committee member need not be trained for almost one year, i.e., approximately half the member's term. [Section 6.0]

Third, the statute is silent on the selection process for budget oversight committee members. However, since the impetus behind the legislation was to promote creation of viable, independent, committees with "watchdog" capability, the Legislature obviously did not envision district administration controlling the selection of members. In contrast, the DOE model standards authorize a "selection committee" for budget oversight committee members comprised of 100% district employees and board members. [Section 3.3.3.3] This may predictably result in appointment of oversight committee members perceived as "rubber stamps" as juxtaposed to inquisitive, analytical, financial reviewers.

Fourth, districts and charter schools are authorized to adopt their own selection process with almost no constraints. See Sections 3.3. and 4.3. Under the "loose" standards, which amount to an "outline", a district superintendent and business manager could be the sole members of a selection committee. To deter "questioning", a district could pay a stipend of any amount (e.g. $10,000) per year to budget oversight committee members with unlimited terms and authorize the superintendent to terminate membership without cause. There is no provision for conflicts of interest.

The DOE compounds the loose standards by barring the Department from requesting revisions as long as the district or charter school submits a policy which follows the DOE outline regardless of substance. [Sections 3.3.1 and 4.3.1] For example, the outline says the policy should provide a membership term length. [Sections 3.3.1.5 and 4.3.1.5] If a district proposes a 10 or 20 year term, the DOE would be barred from requesting a revision. The outline says the policy should provide the process for selection of the oversight committee chairperson. [Sections 3.3.1.4 and 4.3.1.4] A district or charter school could propose that the choice is made solely by the district superintendent or charter school director who may remove the chairperson without cause at any time. The DOE would be barred from asking for a revision.

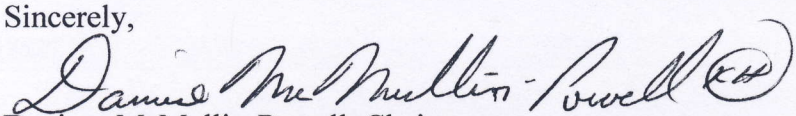
Fifth, there is no provision for providing insurance coverage or indemnification to budget oversight committee members. The members could be subject to lawsuits if district finances are determined to be deficient. To encourage persons to volunteer as committee members, the regulations could require districts and charter schools to provide insurance coverage or right to indemnification in the event of litigation.

Sixth, Council recognizes, that H.S. 1 for H.B. 119 states the following: "Where possible, oversight committees shall contain at least two members with formal educational or vocational backgrounds amenable to oversight of school district financial statements." However, SCPD encourages the DOE to strengthen the language regarding the financial expertise component in Section 3.2 by requiring a CPA or others with the appropriate credentials in finance.

Thank you for your consideration and please contact SCPD if you have any questions or

comments regarding our observations on the proposed regulations.

Sincerely,



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

cc: The Honorable Jack A. Markell
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