



# DISABILITIES LAW PROGRAM

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**To: GACEC Policy and Law**

**CC: SCPD Policy and Law; DDC**

**From: Disabilities Law Program**

**Date: 6/11/2018**

Consistent with GACEC request, I am providing an analysis of relevant proposed regulations appearing in the June 2018 issue of the Register of Regulations. As requested, I have also included a short review of several bills, at the request of GACEC.

## Regulations

### 1. Proposed DDOE Regulation on Unsafe School Options, 21 Del. Register of Regulations 947 [June 1, 2018]

The Elementary and Secondary Education Act (“ESEA”), as amended by the Every Student Succeeds Act (“ESSA”) makes ESEA funding received by the State contingent upon the State giving students who attend a “persistently dangerous” school or who are the victims of “violent criminal offense[s]” at school the opportunity to attend a “safe” school within the school district. 20 *USCA* § 7912(a). The State, with input from school districts, determines the definition of a “persistently dangerous” school. Additionally, State law is used to determine what constitutes a “violent criminal offense.” *Id.*

In Delaware, a school is “persistently dangerous” if it “has five or more unsafe incidents for every one hundred students enrolled for three consecutive fiscal years.” 14 *Del. Admin. C.* 608. The current version of 608 defines “unsafe incidents” as any of the following: (1) the out-of-school suspension or expulsion of a student for a gun free schools violation; (2) the out-of-school suspension or expulsion of a student for the commission on school property of a crime that must be reported, pursuant to 14 *Del. C.* § 4112; (3) a non-student commits a crime on school property that must be reported, pursuant to 14 *Del. C.* § 4112; (4) the out-of-school suspension or expulsion of a student for terroristic threatening.

The most important change is to the definition of “unsafe incidents.” The proposed amendment would remove suspension or expulsion for terroristic threatening from the definition of unsafe incidents. The synopsis to the proposed regulation states that the definition of terroristic threatening is being removed because 14 *Del. C.* § 4112 no longer includes it as a mandatory report offense. However, changes to 14 *Del. C.* § 4112 do not require terroristic

threatening be removed from the definition of “unsafe incidents.” First, no Delaware code could be located that defines “unsafe incidents.” The present version of 14 *Del. Admin. C.* 608 makes it clear that unsafe incidents are not, by definition, only mandatory report crimes.

The definition of unsafe incidents

means *any* of the following:

- The school suspended or expelled a student for a gun free schools violation; *or*
- The school suspended or expelled a student for a crime committed on school property which is required to be reported under 14 Del.C. §4112; *or*
- The school reported a crime committed by a non student on school property that is required to be reported under 14 Del. C. § 4112; *or*
- The school suspended or expelled a student for terroristic threatening as that term is defined in 11 Del. C. § 621.” (emphasis added)

Put another way, an unsafe incident may be expulsion or suspension for mandatory report crimes *or* it may be expulsion or suspension for terroristic threatening.

Furthermore, no other provision in the amendment compels a reading that limits “unsafe incidents” to those involving suspensions or expulsions for mandatory report offenses. “Persistently Dangerous Schools” are identified by DDOE “using data reported to it pursuant to the provisions of 14 Del. C. § 4112, 14 *DE Admin. C.* 601, and any expulsion and suspension data as required by the Department.” 14 DE Admin. Code 608.2.1 (emphasis added). 14 DE Admin. C. 601 requires school districts and charter schools to report “incidents of misconduct,” including terroristic threatening to DDOE.

If the proposed amendment were approved, then the DDOE’s argument that only mandatory report offenses pursuant to § 4112 are unsafe incidents would become correct.<sup>1</sup>

The removal of terroristic threatening could have a large impact on the number of “unsafe incidents” that occur. During the 2016-2017 school year, 315 terroristic threatening incidents with a student as the victim occurred throughout the school districts in the State.<sup>2</sup> There were 292 terroristic threatening incidents with an employee as the victim. Finally, there were 695 total mandatory report incidents. In total, 607 terroristic threatening incidents occurred, which almost

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<sup>1</sup> Gun free school violations would likely be a mandatory report crime pursuant to 14 *Del. C.* 4112(c).

<sup>2</sup> The State distinguishes between incidents and offenses. The data for incidents was used, because the numbers were smaller. No definitions for incident or offense could be located.

equals all mandatory report crime incidents that occurred. Removing terroristic threatening from the definition of “unsafe incidents” might give schools the ability to expel or suspend students without having to worry about being labeled a persistently dangerous school. Please note it is not possible to determine how many of these incidents qualify as “unsafe incidents” because the data does not show how many of these incidents resulted in out-of-school expulsions or suspensions. An incident would not qualify as an “unsafe incident” if there were no out-of-school expulsion or suspension unless it was committed by a non-student. *See* 14 DE Admin. Code 608.

The other potentially problematic change is that a student who is electing to leave a school that is persistently dangerous or who is leaving because they were the victim of a violent felony would no longer be guaranteed the option to move to a school that “is making adequate yearly progress and has not been identified as being in school improvement, corrective action or restructuring.”<sup>3</sup>

The other amendments are minor, e.g. renumbering, capitalization changes, updating a citation and the location where certain information must be posted.

The Council may wish to consider opposing the portion of the proposed amendment that changes the definition of “unsafe incidents.” The proposed change to the definition of “unsafe incidents” makes it easier for schools to avoid being identified as persistently dangerous because there would be fewer types of incidents that meet the definition “unsafe incidents.” This may make it more difficult for a child in an unsafe school to leave. Additionally, it might encourage school districts to utilize out-of-school suspensions and expulsions to address terroristic threatening incidents because they will not have to worry about being labeled a “persistently dangerous school.” Functionally, though, the change in definition may not make much of a difference. Even using the broader definition of “unsafe incidents,” no public schools were designated as “persistently dangerous” for the 2016-2017 school year.<sup>4</sup>

The Council may also wish to oppose the amendment that does not guarantee students the right to move to a school that “is making adequate yearly progress and has not been identified as being in school improvement, corrective action or restructuring.”

## **2. Department of Education Anti-Discrimination Regulations, 14 Del. Admin. C. § 225, 21 Del. Register of Regulations 947 [June 1, 2018]**

The Department of Education (“DoE”) is proposing regulations that will provide guidance to school districts and charter schools (collectively “schools” or “districts”) on establishing anti-discrimination policies. The regulations include “disability” as a one of the “protected characteristics,” but the regulations are primarily aimed at addressing issues that may

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<sup>3</sup> *See* sections 4.1 and 5.1 of the proposed amendment.

<sup>4</sup> No information could be located about whether any public charter schools were designated as “persistently dangerous.”

arise with other protected characteristics. This analysis is focused solely on matter specifically affecting the students with disabilities and their family members. In relevant part, the regulations prohibit discrimination on the basis of protected characteristics in school programs and activities, extracurricular activities, and career and educational and career guidance.<sup>5</sup> It also instructs districts to establish notification and complaint procedures for students who wish to report discrimination.

Because persons with disabilities are already protected by various state and federal laws, the regulations do not create any substantive rights that do not already exist. That said, they provide some clarity and specific instruction to districts. They also require districts to set up a formal complaint process that, depending on how the processes are set up, may create a low cost and high speed way to address potential discrimination in schools. The Disabilities Law Program recommends that the councils support the new regulations with the following notes:

4.1.

The end of this section currently reads “. . . assisting students with a disability.” It should read “. . . assisting students with disabilities.”

10.1.

The section on formal complaints envisions a school staff member who will “address the formal student complaint at each level” and a “final decision-maker at the school or School District levels.” 10.1.2.3.2. It is unclear whether the final decision-maker must be at the district level in school districts or whether the school or district can decide to have that be a school-level position. For charter schools not in districts, the final-decision maker would have to be a school-level position. It can be extremely problematic to have school employees running investigations about discrimination, and making the final decision-maker a district-level position (when possible) does not remove the problem.

The problem is that, if there has been discrimination, the school may have financial liability. Having school staff run the investigation might be acceptable if the perpetrator is another student (because the school might not have liability unless there was a failure to address a known problem), but it creates a conflict of interests if the alleged perpetrator is an employee of the school. The school employee, if he or she finds that there has been discrimination by another employee, is opening the school up to a lawsuit. This creates an incentive to find that there was no discrimination. Even if the employee is being perfectly fair, the relationship would inherently taint any finding that there was no discrimination. Using staff from the school district is better, but it doesn't really fix the problem, because the liability flows to the district as well. In charter schools without a district, there is no way to even limit the appearance of the conflict.

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<sup>5</sup> There are carve outs for activities legally constituted as single gender activities (e.g., sports), activities with the purpose of assisting students with disabilities (e.g., special education classes), and sexual education classes (i.e., one can have those classes separated by gender).

The regulation contemplates the posting of information on a website for the 2018-2019 school year because the regulations go into effect in the middle of the year. Hard copies are to be provided upon request. This is, presumably, to avoid the expense of reprinting handbooks or codes of conduct in the middle of the year. As always, care should be taken to ensure that persons without access to the internet are informed about the new regulations, and the online version should be checked for accessibility.

**3. DMMA Proposed State Plan Amendment related to accreditation of Home Health Agencies, 21 Del. Register of Regulations 951 [June 1, 2018].**

Currently Home Health Agencies (“HHAs”) must be Medicare- accredited in order to participate in the Medicaid program. DMMA proposes to expand eligibility for participation in Medicaid to HHAs who are accredited by other means. The proposed change references the National Association for Home Care and Hospice for a list of accrediting agencies (attached). HHAs will still be required to be licensed by the state. The preamble language in the regulation suggests that requiring Medicare accreditation is a barrier for some HHAs. As such, DMMA has worked with the provider community to provide alternatives. Councils may wish to endorse the proposed change as it may improve the supply of HHAs, with the caveat that DMMA should be careful not to sacrifice quality control in order to acquire an adequate supply of HHAs, and that state agencies need to remain vigilant in their oversight of HHAs, regardless of their source of accreditation.

**4. Final Regulation, DDOE Certificate of Eligibility Regulations 21 Del. Register of Regulations 972 [June 1, 2018].**

The Professional Standards Board declined to make the substantive changes recommended by the Councils, and decided to adopt the proposed regulation after making a grammar change for clarification.

First, the Board and DDOE declined to include a requirement to notify parents that children are being taught by a teacher without a Standard Certificate because an educator “possesses full state certification” if they hold a Certificate of Eligibility while participating in an Alternative Route to Licensure and Certification (“ARTC”) program. The Board did not include a continued competence requirement for reissuance of a Certificate of Eligibility because the educator is required to make “documented progress toward earning a Standard Certificate” by continued participation in an ARTC program. The Board acknowledged that Certificate of Eligibility holders may not be able to participate in the Extended School Year due to the date when the Certificates expire, but said that further regulation could be explored if that becomes a problem. The Board stated that the phrase “other considerations,” used in subsection 4.1.1 means “other information relating to the proposed recipient's ability or qualities for consideration.”

The sole change made to the regulation was the addition of grammar to subsection 4.1.3 in response to the Councils' request for clarification. Even if participation in an ARTC program that satisfies federal requirements is sufficient to qualify a State for funding under the Individual's with Disabilities Act ("IDEA"), it still may be good policy to inform parents or guardians that their child's teacher, while certified, does not hold a Standard Certificate. IDEA conditions State eligibility for funding on the State's assurances that, *inter alia*, special education teachers are fully certified or participating in an ARTC program that satisfies federal requirements, and that special education teachers have not had "certification or licensure requirements waived on an emergency, temporary, or provisional basis." 20 U.S.C.A. § 1412(a)(14)(A),(C). According to the implementing regulations, a teacher "has obtained full State certification as a special education teacher" if they are participating in an ARTC program that meets enumerated requirements. 34 C.F.R. § 300.156(c). That said, the child is still being taught by someone who does not yet satisfy the requirements for attaining a Standard Certificate, under Delaware law. To earn a Standard Certificate, an educator must have "the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students." 14 DE Admin. C. § 1507.2. To demonstrate acquisition of the prescribed knowledge, skill, or education, an educator must *complete* an approved educator preparation program or an advanced certification, such as an alternative certification program. 14 DE Admin. C. § 1505.3.1.<sup>6</sup>

Next, it still does not seem that a Certificate of Eligibility holder is required to demonstrate competence to be eligible for their Certificate to be reissued for a second or third year. An Emergency Certificate recipient must show documented progress toward earning a Standard Certificate *and* "continued competence" before DDOE will reissue the certificate for a second year. 14 DE Admin. C. § 1506.2. "Continued competence" is demonstrated through "receiving a satisfactory summative evaluation on DPAS-II or another Department-approved evaluation system." 14 DE Admin. C. § 1506.2.1. The only requirement Certificate of Eligibility holders must meet is that they make progress toward earning a Standard Certificate by continuing to participate in an alternative-route-to-certification program.

Finally, the Board's explanation what "other considerations" might be involved when an employer assesses an individual's competency is not clear. The Board stated that the phrase "other considerations," used in subsection 4.1.1 means "other information relating to the proposed recipient's ability or qualities for consideration."

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<sup>6</sup> Though the proposed regulations do not explicitly state why a Certificate of Eligibility is issued rather than a Standard Certificate, it is likely due to the prescribed knowledge, skill, or education requirement. See 14 DE Admin. C. § 1506.2.2, the regulation that discusses Emergency Certification. It defines an Emergency Certificate as a credential provided when the teacher "lacks necessary skills and knowledge to immediately meet certification requirements in a specific content area."

Council may wish to reiterate its request for parental notification and a competency requirement to be included. Council could also request that examples of what constitute appropriate “other considerations” be provided.

### **Pending Bills**

#### **HB 402 and HB 438. Amendments to 14 Del Code §4130 and §3730**

HB 402 removes the ability of a district superintendent to report an expelled student to DMV, with the resulting suspension of the student’s drivers’ license. Currently in 14 Del. Code §4130, a superintendent is obligated to report an expelled student to the DMV, who then has the authority to suspend that student’s driver’s license for the duration of the expulsion, until age 19, or for two years, depending on the circumstances. HB 438 removes the ability of JP Court to order the suspension or revocation of driving permits and licenses, or a hunting license, as part of truancy proceedings.

One can assume that the basis for these amendments is the understanding that removing a driver’s license can have many unintended consequences.<sup>7</sup> ( see attached article) A fair number of states have “No Pass, No Drive” policies and laws that penalize truants and dropouts by removing driving privileges, passed in the late 2000s. It is worth noting that children are generally truant by choice, but they are not expelled by choice. In any case, removal of a driver’s license will likely prevent a student from getting to school, to an alternative program or to employment. For that reason, Councils should consider endorsing these bills.

#### **HB 433**

This bill amends code sections that govern the Alternative Route for Teacher Licensure and Certification (ARTC) programs. Section I of the amendment adds the definition of “ARTC program” to the Title 14, Chapter 12 definitions section. Section 1260 outlines the requirements an educator participating in ARTC must fulfil to obtain an initial license and an emergency certificate or certificate of eligibility. Section II of the bill would change this section to be about what requirements ARTC programs must fulfil.

Currently, an ARTC program consists of three phases: (1) an at least 120-hour seminar or practicum that should occur prior to when the educator “takes full responsibility for a classroom.”<sup>8</sup> The seminar/practicum must provide formal instruction in certain enumerated topics, basic teaching skills “through supervised teaching experiences with students,” and

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<sup>7</sup> Nationally, there is a trend away from driver’s license suspensions being used a punitive measure for offenses unrelated to driver safety.  
<http://www.ncsc.org/~media/Microsites/Files/Trends%202017/Rethinking-Drivers-License-Suspensions-Trends-2017.ashx>. This is due to unintended consequences and a disproportionate impact on people living in poverty.

<sup>8</sup> 14 Del. C. § 1261. If the teacher was hired after July 1, they must complete the 120-hour practicum/seminar requirement prior to the start of the next year.

information on policies, organization, and the curriculum of the employing school district; (2) intensive supervision and evaluation beginning the first day the ARTC teacher takes control of the classroom and continuing for at least 10 weeks; and (3) additional supervision and evaluation lasting for at least 20 weeks, during which time the teacher should be afforded an opportunity to observe experienced colleagues teaching.

The code additionally states that at least 200 hours of formal instruction or professional development should be provided, in total, throughout the three program phases. The training must, at minimum, address curriculum, student development and learning, and the classroom and the school. The law provides examples of what topics would constitute a study in curriculum, student development and learning, and the classroom and the school. The law also states that participants shall receive credit for training successfully completed before entry into ARTC or during the seminar/practicum phase. Finally, the code states that other ARTC programs may be implemented, so long as they meet the minimum requirements required.

The proposed amendment removes the requirement that the seminar/practicum component be at least 120-hours. It also no longer requires that a teacher hired before July 1 complete the seminar/practicum before taking full responsibility for the classroom or that a teacher hired after July 1 finish the seminar/practicum before the next school year. Furthermore, phase two and phase three would be removed from the ARTC program responsibilities section and placed into a section that outlines school district and charter school responsibilities. *See infra*. This may not actually be a substantive change because it is likely that the school districts and charter schools already assume this responsibility—the move may be done to clarify responsibilities. According to the synopsis, one purpose of this bill is to distinguish responsibilities of the school districts and charter schools, and the responsibilities of the ARTC program providers.

The amendment keeps the requirement that at least 200 hours of formal instruction or professional development be required to address, at minimum, the following topics: curriculum, student development and learning, and the classroom and the school. However, the amendment no longer includes examples of what constitutes studies in the aforementioned topics. Moreover, the amendment no longer guarantees participants will receive credit for training received before entry into ARTC or during the seminar/ practicum phase—it states that participants *may* receive credit, rather than *shall*, as it is currently written. Finally, the proposed amendment removes the subsection that states other ARTC programs may be implemented so long as they satisfy the minimum requirements.

The Council may wish to request that the bill include a requirement for some pre-employment training to take the place of the 120-hour seminar/practicum requirement. It seems wise to provide ARTC participants, who likely are new to teaching, some training before they assume responsibility for a classroom or to require that those hired later complete a certain amount of training within their first year, as was previously required. The amended law does not



indicate when the educator would have to take the seminar/practicum or how many hours would be required.

The Council may also wish to advocate for inclusion of a subsection that makes it possible for other ARTC programs to be implemented, so long as they meet the minimum requirements. This would keep the door open for DDOE to promulgate regulations in the event it becomes advantageous to later add other types of ARTC programs later.

Section 1261 outlines school district and charter school requirements for utilizing a teacher in an ARTC program and the minimum training an ARTC program must provide. Section III of the amendment removes ARTC program responsibilities, and focuses solely on school district and charter school duties. Currently, school districts and charter schools must “participate” in the three ARTC phases discussed, *supra*, and assign a mentor to each ARTC participant. 14 *Del. C.* § 1261(a)(1),(2). Phase two and phase three require supervision and evaluation. Phase two begins the first day the teacher “assumes fully responsibility for a classroom,” and continues for 10 weeks. The teacher shall participate in mentoring, and at the end of 10 weeks, be observed and evaluated by certified evaluators. The certified evaluators shall provide a “formal written progress report” to the teacher. 14 *Del. C.* § 1261(b)(2). Phase three is a continuation of the supervision and evaluation, which should last no less than 20 weeks. 14 *Del. C.* § 1261(b)(3). The teacher shall continue to participate in mentoring, and will be observed and evaluated on at least two occasions by school administration. *Id.* Additionally, “no more than 2 months shall pass without a formal observation.” *Id.* Finally, the teacher shall have opportunities to observe experienced colleagues teach. *Id.*

The amended code would still require school districts and charter schools to assign each ARTC participant a mentor. Furthermore, school districts must provide “an initial period of intensive on-the-job supervision...and provide an additional period of continued supervision and evaluation.” All the detail about what the initial and continued supervision phases will look like is removed. The amendment refers the reader to the regulations for guidance. Currently, the regulations impose similar requirements, though there is no mention that a formal progress report must be provided at the end of Phase 2 nor is it specified that school administrators must observe the educator.<sup>9</sup> Although the ARTC regulations do not include a requirement that the participant be afforded the opportunity to observe experienced teachers, the regulations on educator mentoring do require that novice educators observe experienced educators at least four times during their first year of teaching.<sup>10</sup> A teacher participating in the ARTC program would qualify as a novice educator. 14 DE Admin. C. 1503.2.0. If HB 433 passes, the ARTC participant might not be afforded the opportunity to observe an experienced colleague within the 20-week

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<sup>9</sup> Teachers enrolled in an Alternative Routes for Teacher Licensure and Certification Program shall be observed and formally evaluated by a certified evaluator using the state approved evaluation system at least once during the first ten (10) weeks in the classroom, and a minimum of two (2) additional times within the next twenty (20) weeks. Evaluations shall be no more than two (2) months apart.

<sup>10</sup> 14 DE Admin. C. 1503.4.2.5.

continued supervision period, but they would at least be given the opportunity to do so sometime within their first year teaching.

One concern is that if the law no longer sets minimum guidelines for what the requirements are for an initial and continued supervision period, the regulations could be amended to weaken supervision requirements. The Council may want to ask that the Code include some description of the initial and continuing supervision phases; that way there are some minimum requirements in place.

Section 1262 discusses evaluation requirements for ARTC teachers. Section 1262 states that teachers shall be observed by their assigned mentor, but that their mentor shall not “participate in any way in decisions which might have a bearing on the licensure, certification or employment of teachers... interactions between teachers and experienced mentor teachers are formative in nature and considered a matter of professional privilege.” 14 *Del. C.* § 1262(a),(b).

Section IV of this bill strikes all mentor-mentee protections from Section 1262. Once removed from Section 1262, there does not appear to be any other section in the Code that provides similar protection for the mentor-mentee relationship. The regulations prevent mentors from participating in licensure and certification decisions,<sup>11</sup> but it is possible this could be amended if the Code no longer contains the prohibition.

Council may want to request the Legislature amend the bill to add a section that continues to codify protection of the mentor-mentee relationship. There may be value to ensuring a mentee feels safe communicating questions and concerns to their mentor. Additionally, a mentor observes the mentee’s teaching and offers feedback—it may be helpful for a mentee’s professional development to receive comments and critiques that cannot be used as part of their formal evaluations.

Section IV of this bill would turn Section 1262 into a description of the requirements an educator participating in ARTC must fulfil to obtain an initial license and an emergency certificate or certificate of eligibility. Currently, these requirements are located in 14 *Del. C.* § 1260. Section 1260 requires that the individual maintain enrollment in an ARTC program, have a bachelor’s degree with at least 30 credit hours in the applicable instructional area; pass a content readiness exam by the end of next fiscal year after their hire date; pass a health and criminal background screening; and obtain and accept an employment offer.

First, the amendment does not limit ARTC participation to those solely with college credit in an applicable area. The amendment requires that an individual hold a bachelor’s degree, and either have obtained 24 credits in a relevant content area *or* the equivalent in professional development, *or* passed an approved content-readiness exam prior to entering ARTC. Allowing more ways to qualify for an ARTC program seemingly advances the Legislature’s goal of

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<sup>11</sup> 14 *DE Admin. C.* 1503.5.0.

“expanding pathways to entering” an ARTC program and to recruiting a more diverse population, and Council may wish to support this part of the amendment.

Next, the amendment adds the following section: “while in an ARTC program, a participant must...maintain satisfactory progress towards the completion of all ARTC program requirements and be continuously employed with a district or charter school.” Council may wish to request clarification; it would be helpful to know what the consequences are for failing to progress toward the completion of ARTC program requirements and/or for failing to maintain employment.

Finally, the amendment lists requirements that the ARTC program participant must satisfy within two years of teaching to obtain a Standard Certificate. One of the requirements is that the educator must receive two summative evaluations with not more than one being unsatisfactory.

As currently written, educators are eligible for a Standard Certification if they, among other things, meet the qualifications for licensure. 14 *Del. C.* § 1220(a). The requirements to obtain an Initial License are (1) holding a bachelor’s degree; (2) passing a content-readiness exam; and (3) completing a student teaching program or other alternative, such as participation in an ARTC program. 14 *Del. C.* § 1210. To obtain a Continuing License, the educator must satisfy the Initial Licensure requirements, while also having received two summative evaluations with not more than one being unsatisfactory. Aside from coming into play through the licensure requirement, satisfactory performance on summative evaluations is not otherwise a prerequisite for earning a Standard Certificate. 14 *Del. C.* § 1220(a), 14 DE Admin C. 1505.

Council could consider requesting clarification about whether the Legislature is now requiring satisfactory summative evaluation performance as part of the requirements to earn a Standard Certificate or whether the Legislature is requiring that ARTC participants qualify for a Continuing License, rather than an Initial License, within their first two years of teaching. If the answer to either question is no, the summative evaluation requirement should likely be stricken from this section.

An Initial License is valid for four years. 14 *Del. C.* § 1210. Functionally, for an educator to attain a Continuing License, they may not have earned more than one unsatisfactory summative evaluation score during their period of initial licensure. 14 DE Admin C. 1511.3.3. Since novice teachers receive a summative evaluation each year, an ARTC participant cannot receive more than one unsatisfactory summative evaluation within two years if they eventually want their Continuing License. 14 DE Admin. C. 106A.3.3. It may be that the Legislature added the summative evaluation requirement to the Code to reflect this reality. If that is the case, though, the term “initial” should be removed from title of this section.

Currently, the law requires certified evaluators to prepare a “comprehensive evaluation report” on the teacher’s performance in the ARTC program, and provide either a

recommendation to approve or disapprove licensure and certification. 14 *Del. C.* § 1263(a), (c). The evaluators will recommend an initial license, if the individual completed the program in less than four years or a continuing license if four years has elapsed. *Id.* The evaluators must provide a copy of the report to the teacher before it is submitted to the DDOE. 14 *Del. C.* § 1263(d). The educator may provide written argument to DDOE to contest the evaluators' recommendation. 14 *Del. C.* § 1263(e). The Secretary or Secretary's designee decides whether to adopt the evaluators' recommendation. *Id.* An educator who is "disapproved" may ask DDOE for another opportunity to participate in ARTC. 14 *Del. C.* § 1263(f).

First, the amendment identifies who is responsible for providing the ARTC participant or DDOE information relevant to the licensure and certification decision. Next, the amendment states that the "the Department shall issue" a license and certification to a participant that (1) successfully completes all ARTC program requirements; (2) receives two summative evaluations, with not more than one being unsatisfactory; (3) passes a content readiness exam; (4) passes an approved performance assessment.

As discussed, *supra*, Council may wish to ask for clarification on why the summative evaluation requirement is included. The Title of this amended section would be "Issuance of *initial* licensure and certification to a participant in alternative routes for teacher initial licensure and certification program." Emphasis added. It does not appear certain scores on summative evaluations are required to obtain an Initial License and a Standard Certificate. 14 *Del. C.* § 1210, 14 *Del. C.* § 1220(a), 14 DE Admin C. 1505, 14 DE Admin C. 1511. As mentioned, *supra*, the summative evaluation scores will become relevant when the participant applies for a Continuing License. If the participant has attained more than one unsatisfactory score, they will be ineligible for a Continuing License. 14 DE Admin C. 1511.3.3.

Council may also wish to ask the Legislature to include language about what happens if an application does not satisfy the requirements to obtain license and certification; may the participant ask DDOE for another opportunity to participate in ARTC, as is currently allowed?

Currently, 14 *Del. C.* § 1264 gives teachers participating in an ARTC program the right to a hearing before the Standards Board to challenge an adverse decision by the Secretary or the Secretary's designee. The amendment would repeal this section. Currently, the ARTC program regulation provides a right to a hearing in the event an ARTC participant is denied their license and certification. 14 DE Admin C. 1507.10.0. This regulation may be amended in response to changes in the Code. It may be that a hearing right is less important because the proposed amendment appears to make the licensure and certification decision less subjective. The decision would be dependent on an individual meeting a list of requirements, rather than being based on a report and recommendation by an evaluator. However, licensure and certification denial is a serious consequence that could cause people to lose their jobs. It seems wise to offer affected individuals a hearing to ensure the denial was appropriate. It may be that 14 *Del. C.* § 1217 provides ARTC participants the right to a hearing if their application for a license is denied.

However, there does not appear to be a hearing right for an individual who is denied a Standard Certificate—rather there is only a hearing right when the Standard Certificate is revoked.

Council may wish to oppose removal of the fair hearing right for ARTC participants. Alternatively, Council may wish to clarify that 14 *Del. C.* § 1217 provides ARTC participants the right to a hearing if their application for a license is denied. This would at least afford participants a hearing right on licensure denial if not the denial of their Standard Certificate.

In summary, the council may wish to do the following:

- seek amendments to Section II of HB 433 to require that an ARTC participant is required to receive some pre-employment training, and for keeping the subsection that allows other ARTC programs to be implemented, so long as they meet the minimum requirements.
- For Section III, the Council could consider asking the Legislature to keep some description of the initial and continuing supervision phases, that way there are some minimum requirements in place.
- In Section IV, Council may want to request the Legislature continue to codify protection of the mentor-mentee relationship. Additionally, Council may wish to support the portion of the amendment that would allow more people from diverse professional backgrounds to participate in an ARTC program. Council may also want to request clarification about the consequences an ARTC participant faces for failing to progress toward the completion of ARTC program requirements and/or for failing to maintain employment. Finally, it may be helpful for Council to seek clarification on the summative evaluation component that has been included in the licensure and certification requirements.
- In Section V, Council may, once again, wish to ask for clarification on the summative evaluation component. Furthermore, Council may want to ask the Legislature to address what happens to the participant if they do not satisfy the requirements.
- In Section VI, Council may wish to oppose removal of the fair hearing right for ARTC participants. Alternatively, Council may wish to clarify whether 14 *Del. C.* § 1217 provides ARTC participants the right to a hearing if their application for a license is denied.

Other bills that you may want to look at:

1. HB 442 Juvenile Offender Civil Citation Program amendments
2. HB 448 Constitutional Amendment related to Parental Rights
3. HB 450 Expungement
4. HB 446 Voting Constitutional amendment; ability of DOE to use statutory process
5. HB 441 Pharmacy Benefit Managers requiring preauthorization chronic meds