



# DISABILITIES LAW PROGRAM

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**To: GACEC Policy and Law**

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

**From: Disabilities Law Program**

**Date: 7/10/2018**

Consistent with council requests, I am providing an analysis of relevant proposed regulations appearing in the July 2018 issue of the Register of Regulations. As the legislative session just ended, there are no new bills to review.

## Regulations

### 1. Proposed DDOE Regulation 209 regarding on Alternative Routes to Certification for Teachers of Students with Disabilities, 22 Del. Register of Regulations 11 [July 1, 2018]

House Bill 286 created requirements that alternative route to certification (“ARTC”) programs for teachers of students with disabilities must meet for the program to earn state approval. These requirements are codified in 14 *Del. C.* § 1266. The proposed amendment incorporates these statutory requirements into the regulations.

Pursuant to 14 *Del. C.* § 1266, an ARTC program for teachers of students with disabilities must include the following to be state-approved:

- (1) Delivery of high quality professional development to a teacher that is sustained, intensive, and classroom-focused.
- (2) The requirement that a teacher participates in intensive supervision that consists of structured guidance and regular, ongoing support or teacher mentoring.
- (3) The requirement that a teacher participate for no more than 3 years.
- (4) The requirement that a teacher demonstrate satisfactory progress toward standard certification.

(5) Provision of regular reports to the Department, made in accordance with rules and regulations that the Department promulgates, that the requirements under this subsection are being met.

The proposed amendment closely tracks the statutory language. The Council may wish to support the amendment with the following minor amendments:

- Proposed Section 9.1.1.1 uses the term “initial certification.” There is no such thing as an initial certification. A participant in an ARTC program may be issued an initial *license* and a Certificate of Eligibility or an Emergency Certificate. Emphasis added. It is more clear and accurate to change “initial certification” to “licensure and certification.”
- Additionally, proposed Section 9.1.1.1 states that a teacher ARTC participant “hired after July 1 of a school year shall fulfill *the* 120-hour seminar/practicum requirement prior to the start of the following school year.” Emphasis added. The 120-hour practicum requirement for ARTC participants is not located in proposed Section 9.0; rather the practicum requirement is in 14 DE Admin C. § 1507.<sup>1</sup> Section 1507 contains program requirements for ARTC programs that also apply to ARTC programs for teachers of students with disabilities. It may be clearer to refer the reader to 14 DE Admin. C. § 1507 for the practicum requirement and other ARTC program requirements that are located in § 1507, but not in § 290. Council may wish to recommend inclusion of language in Section 9.0 such as the following: “In addition to satisfying the provisions of 14 DE Admin. Code 1507, alternative routes to certification programs for teachers of students with disabilities must meet the following requirements, pursuant to 14 *Del. C.* § 1266.”
- Finally, use of the term “program” in Section 290 means Educator Preparation Programs. 14 DE Admin. C § 290.2.0. ARTC programs are not Educator Preparation Programs. Currently, the definition of Educator Preparation Program states that the term ‘program’ does not mean Educator Preparation Program when it is used in Section 8.0, which discusses the ARTC program approval process. The proposed amendment adds Section 9.0, which also addresses ARTC programs, not Educator Preparation Programs. Council may wish to recommend that DDOE amend the definition of Educator Preparation Programs in the following way: “except that where used in Section 8.0 and Section 9.0 of this regulation, the word ‘program(s)’ shall mean the program(s) approved pursuant to said section(s). The recommended insertions are shown by underline.

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<sup>1</sup> The language “seminar/practicum” and the date, July 1, come from the former version of 14 *Del. C.* § 1261. The new version of § 1261, which passed as part of HB 433, no longer discusses a practicum requirement. However, the seminar/ practicum requirement remains in Section 1507, although different language is used to describe the requirement. Section 1507 uses the term “summer institute” instead of “seminar/practicum.” It also does not state that an individual hired after July 1 has been hired too late to participate in the summer institute. Rather no hire date is specified: “candidates employed too late to participate in the summer institute will complete the practicum experience and seminars on teaching during the first school year and will participate in the summer institute following their first year of teaching.”

## 2. Proposed DHSS DSS Regulation on TANF Contracts for Mutual Responsibility, 22 Del. Register of Regulations 15 [July 1, 2018]

In this regulation, DSS does not make substantive changes to existing regulations, and states that its intent is to streamline the language being used, as well as add a financial coaching requirement. TANF is Temporary Assistance to Needy Families. The Contract of Mutual Responsibility (CMR) is an agreement between the TANF client and DSS which sets obligations and expectations for helping the client achieve self-sufficiency. States are left broad discretion to formulate the terms of these conditions to receipt of TANF. Please note that Delaware's provisions regarding CMR are viewed by CLASI as being unduly harsh, and other advocates from CLASI will be submitting comments on these issues addressing these broader concerns.

There is a general concern that in simplifying the language, DSS has removed language that emphasizes that the DSS worker is responsible for ensuring that services are available ( and that a recipient is not sanctioned if they are not) and that the recipient understands their obligations under the CMR. Most of the language stressing DSS's goal of encouraging recipients to meet Contract expectations has been removed. For example, the existing regulation states: "*Under TANF, the client and the worker must become partners in efforts to surmount any and all obstacles to success.*" This sentence and all others like it have been removed from the new regulations. It is completely barebones and reads like a criminal statute.

Specifically, DLP notes the following:

1. Revised Section 1, Paragraph C, which relates to making changes to a CMR if the needs or circumstances of the family has changed, substitutes the word "will" to "may". This is a significant, fundamental change, making changes to the CMR discretionary rather than mandatory, and should be corrected. For example, if a family requires a change to the CMR as a reasonable accommodation for a disability, DSS would be obligated to revise the CMR. As a policy matter, it should be mandatory that DSS revise a CMR to reflect changes in a family's circumstances; otherwise the DSS would be acting in an arbitrary manner. Councils may wish to share this concern.
2. There are no proposed changes to Section 3017.1, the Transitional Work Program or TWP, which is designed to allow recipients with disabilities to avoid mandatory work requirements under the CMR. What is interesting is that the regulations do not state that disability may factor into other required elements of a CMR. DLP's position is that DSS is obligated to make reasonable accommodations in all aspects of its programs. Consequently, DLP suggests that Councils consider recommending a new subsection C be added to the proposed revised Section 3009(4) that states:

*C. CMRs must reflect any needed accommodations required by a household member with a disability. DSS will consider and grant any substantiated reasonable accommodation request from a recipient with a disability ( or a member of the household with a disability) when developing or revising a CMR and shall not impose any requirement that a recipient or household member is unable to complete due to disability.*

### **3. Proposed DSHS Delaware Council on Police Training, Regulation 801, 22 Del. Register of Regulations 26 [July 1, 2018]**

Most of the revisions to this regulation that governs training requirements for police officers relate to gun and gun training, which I will not address. One particular change relating to disability is below:

#### *6.167 Handling Persons With Disabilities 8 Hours*

*16.167.1 The purpose of this course is to identify behavioral factors with which the officer has to deal may encounter, discusses the influence of group behavior or individual behavior, and emphasizes the importance of understanding unusual behaviors in order to handle that behavior most effectively. Also includes a review of the 24-hour commitment procedures.*

While the use of “encounter” instead of “has to deal” is certainly an improvement, Councils may wish to suggest that the entire provision be renamed to avoid the use of the word “handle” as this word has a negative connotation. I would suggest Councils recommend “interactions” as an alternative.

There is also an added provision 9.2.14 which requires training to incorporate training in defensive tactics and de-escalation techniques. This would be of benefit to individuals with intellectual disabilities and behavioral health issues in their interactions with law enforcement. Likewise Section 16.28, 16.29 and 16.34 incorporates de-escalation techniques. There are also several instances where training in sexual assault, domestic violence and abuse are added to the curriculum. These are all positive additions and Councils should consider endorsing.

In general, there are a number of eligibility criteria that exclude individuals with physical disabilities. These are not new. Please note sections 3.4.1; 3.4.3; and 3.4.5. It is certainly the case that some types of disabilities would probably preclude an applicant from becoming a police officer; it is always concerning, however, when there is essentially a blanket ban.

In section 3.10 related to written examinations, there is no mention of providing testing accommodations. Section 3.13.5 does point out that employers are prohibited from discriminating under the Civil Rights Act, but there is no mention of the ADA or the state employment discrimination law. There is no mention of a reasonable accommodation policy. Councils may wish to bring these omissions to the attention of the Council on Police Training.

**4. Proposed Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers 3700 Regulation on Licensing Requirements, 22 Del. Register of Regulations 30 [July 1, 2018]**

This proposed amendment to regulation primarily updates clinical practicum and fellowship requirements to make them consistent with the American Speech Language Hearing Association (“ASHA”) standards. Under state law, SPLs and audiologists must meet ASHA standards for certification in order to be licensed. See 24 Del. Code §3708. So, for example, the minimum number of clinical practicum for graduate level was increased from 250 to 325 hours. The regulation more completely defines the Clinical Fellowship to be 36 weeks of full time work rather than defining it in months. Please see additional new requirements in §2.3.

There is a new requirement that audiologists and hearing aid dispensers inform clients of telecoil technology and provide them with written materials<sup>2</sup>. (New Section 11) This change is required by 24 Del Code §3706(a) (amended in 2016).

There are also a number of mundane additions, including the requirement that licensed individuals keep their addresses updated. Finally, the regulations update the list of felonies that prelude licensure, to include accurate descriptions of drug-related offenses. Councils may wish to endorse these proposed amendments.

**Final Regulations**

The following previously reviewed regulations became final:

1. DDOE Limitation on Use of Seclusion and Restraint relating to School Resource Officers, 22 Del. Register of Regulations 55 [July 1, 2018]
2. DMMA Regulation on Long Term Care Medicaid Application Methods, 22 Del. Register of Regulations 66 [July 1, 2018]

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<sup>2</sup> [https://www.hearingloss.org/wp-content/uploads/HLAA\\_HAT\\_and\\_Telecoil.pdf?pdf=HatTelecoil](https://www.hearingloss.org/wp-content/uploads/HLAA_HAT_and_Telecoil.pdf?pdf=HatTelecoil)