

Memo

To: GACEC, DDC, SCPD Policy and Law (revised)

From: Disabilities Law Program

Re: September 2020 Policy and Law

Date: 9/22/2020

1. DHSS Strategic Plan

DHSS's Strategic Plan, released on July 16, 2020 is divided into six major goals, each including underlying objectives, along suggested strategies and "key performance indicators" that may be used to gauge progress. DLP recommends that councils consider these comments regarding the Strategic Plan. The six major goals articulated in the plan are:

- 1) Person-Centered Approach, which includes the objectives to "[i]nstitute inter-divisional teams with accountability to create seamless service delivery policies, structures, programs and funding" and "collaborate with stakeholders to gather input on person-centered policy and program direction." This goal also includes establishing "Department-level program performance and evaluation metrics" and also "leverage[ing] technology to deliver information to clients and enable information sharing to reduce the need for clients to work through multiple divisions or have to visit physical locations to submit documents or receive services."
- 2) Public Health and Safety Infrastructure, which suggested conducting a "comprehensive assessment of core public health and safety service gaps and needs to identify specific barriers and challenges, as well as potential solutions."
- 3) DHSS Workforce, which suggests the creation of various recruiting, training and mentoring initiatives as well as "[e]nhanc[ing] the process for monitoring contracted provider outcomes, including through feedback loops and as assessment of consolidated contractor oversight."
- 4) Integrated Data Systems, which includes creating Department-wide policies and procedures regarding on the management of data and inter-Division data use agreements to enhance the sharing of client information and coordination of care.
- 5) Communications and Outreach, which includes suggested strategies of creating additional mechanisms to solicit feedback from stakeholders, conducting "listening tours," and revamping the DHSS website.

- 6) Planning for Success, which potentially includes improving internal structures for longer-term planning and creating annual surveys to administer to customers, employees, and stakeholders.

While these goals are certainly not objectionable, the broad and general nature of the goals and the underlying objectives laid out in the report make it difficult to provide specific feedback. In various ways, however, they all tie in to two primary themes that have been common sources of complaints in recent years from the disability community in Delaware: the need to improve availability and quality of direct services as well as coordination of care for individuals with disabilities, and the need for the Department to increase its engagement with constituent groups in the disability community, including both collaboration with advocates and stakeholder groups as well as more direct engagement with service recipients and their families.

With respect to improving the availability and quality of direct services for people with disabilities, there are a few particular issue areas that were not discussed in the Strategic Plan. First, services for people with disabilities are not always readily available and there is not always a meaningful choice of provider. Some programs, such as Personal Attendant Services offered through DSAAPD, have extensive waiting lists that can take a number of years for individuals to actually receive services. Sometimes limited provider contracts and provider staffing shortage mean various services are not immediately available at the time a client is found to otherwise be eligible for them, such as various support services provided through DSAMH's PROMISE program.

Further, as services have traditionally been "silo-ed" by Division, there are also often limited options for people with co-occurring disabilities, such as individuals who have both a mental illness and an intellectual or developmental disability, and individuals with mental illness who have significant physical impairments. These individuals are often placed in situations where only some of their needs are being met and as a result, they face challenges in maintaining stability in their services, housing and health. This can sometimes result in prolonged hospital stays because no clear option for services in the community can be identified. While the Strategic Plan refers to utilizing technology to improve service accessibility for clients, including potentially "reduc[ing] the need... to work through multiple divisions," it does not specifically address this common problem, which often reinforced by a culture and billing systems that incentivize Divisions to be territorial about the provision of services to clients with complex needs.

Additionally, it is important that a commitment to person -centered services go beyond lip service in the establishment of various programs and include accountability mechanisms to ensure individual needs are being met. This includes both regular internal monitoring to ensure compliance with program standards but also grievance systems that are meaningfully responsive to individual complaints. While many programs in place for people with disabilities tout their focus on person centered planning and individualized support, how this plays out in individual cases can vary significantly. For example, the ACT model of care, used by DSAMH to serve many of the people with severe and persistent mental illness in the state, emphasizes the holistic and "wraparound" nature of services to be provided by an ACT team, however consumers and advocates consistently see a "one-size-fits-all" approach being utilized by ACT teams to

administer those services, often primarily revolving around medication delivery. There is often great inconsistency in the types of assistance that individual service recipients receive from their ACT teams that does not necessarily correspond to individual need. Complaints to PROMISE care managers or DSAMH's Consumer Affairs do not always bring about satisfactory resolution to these concerns. If individual service recipients do not see anything changing when they express often repeated complaints about their services, it undermines their confidence that they are truly the focus of the services being provided.

Workforce development is also essential in ensuring the quality of services and case management in particular. It is important that training of staff in all divisions, not just divisions specifically focused on populations with disabilities, receive training on inclusivity and accommodating individuals with disabilities. It is also important that staff and contractors in divisions that are focused on the provision of direct services of people with disabilities are trained to be knowledgeable in resources for the populations they serve and best practices for working with those populations.

Further, while data is helpful for a number of purposes, it does not fully capture the day-to-day experiences of people with disabilities and their families who rely on DHSS Divisions for needed care and support services, and may not capture all aspects of the customer experience, including the nature of regular interactions with program staff and consistency in following service plans. This speaks to the need for more direct engagement with service recipients, which is further discussed below.

With respect to engagement with the disability community, the Department is not always receptive to feedback from the disability community and does not regularly seek it out. This has been particularly apparent during the Covid-19 pandemic as there have been particular safety concerns for some individuals with disabilities, particularly those in group residential settings, and the accessibility of some services have been inevitably impacted by the larger disruptions imposed by the pandemic. This was a concern pre-dating the pandemic however, as bodies established to further engage stakeholders in providing oversight and guidance of the various DHSS Divisions are inconsistently operational. For example, DSAMH's Advisory Council has been minimally active for the past couple of years, and the body established by statute to ensure ongoing progress in the goals of the U.S. DOJ Settlement Agreement was never even fully formed and only held one meeting. Again, while data plays in an important role in oversight and long-term planning, regular engagement with stakeholders and providing a variety of opportunities for their feedback about how things are or aren't working is also important. Beyond that the experience of individual service recipients is not always represented by the stakeholders who can mobilize to attend public meetings or sit on committees. The Department should have an on-the-ground presence that meets service recipients where they are in the community and provides accessible ways for individual service recipients to share feedback and concerns. While the Strategic Plan seems to recognize this to some degree, it is worth emphasizing as people with disabilities have historically been excluded from discussions that directly involve their needs and wellbeing.

2. Proposed Regulations

Proposed DDOE Regulation on 505 High School Graduation Requirements and Diplomas, 24 Del. Register of Regulations 220 (September 1, 2020)

The Delaware Department of Education (“DDOE”) proposes to amend 14 Del. Admin. C. § 505, which describes the State requirements for high school graduation. DDOE is proposing to amend this regulation to add the definition for Homeless Youth and to allow students that have experienced homelessness during any of their high school years to graduate based on the State’s requirements. DDOE believes this change will remove barriers that could arise if a student experiencing homelessness transfers between high schools that have different / additional requirements for graduation. This idea was included in the State’s Every Student Succeeds Act Plan.

Specifically, this proposed amendment will add “Homeless Youth” to 14 Del. Admin. C. § 505.11.0, which currently allows for students in the custody of the Department of Services for Children Youth and Families to graduate based on the graduation requirements in the regulation *in lieu of* the particular District or Charter School’s graduation requirements. Given the “transient nature” of homelessness, youth who are homeless often experience “significant disruption in their education.” National Conference of State Legislatures, <https://www.ncsl.org/research/human-services/homeless-and-runaway-youth.aspx>. For example, this disruption can be seen as youth withdraw and enroll in several schools over the course of a single school year or chronic absenteeism. What this proposed amendment is attempting to do is alleviate the difficulties of the former: switching schools several times throughout a single school year.

This proposed amendment will bring Delaware in line with several other states that have passed similar legislation. School House Connection, <https://www.schoolhouseconnection.org/state-laws-to-increase-high-school-graduation-for-students-experiencing-homelessness/>. Councils may wish to consider supporting this proposed regulation as is, while also acknowledging that there is still more work to be done in this area.

Proposed DDOE Regulation on 1520 Early Childhood Teacher, 24 Del. Register of Regulations 227 (September 1, 2020)

DDOE proposes to amend 14 Del. Admin. C. § 1520, which describes requirements for obtaining the Early Childhood Teacher standard certificate (hereinafter “Certificate”) pursuant to 14 Del. C. § 1220. DDOE, in cooperation with the Professional Standards Board (hereinafter “The Board”), is proposing to amend this regulation to clarify language in Section 1.0, add definitions to Section 2.0, clarify the requirements for issuing a Certificate, and adding sections 6.0-9.0 which concern the validity of the Certificate, discipline actions, requests for the Secretary of Education to review applications and, recognizing past certifications, respectively.

Many of the proposed changes are similar to the proposed changes to the regulation governing the Standard Certificate for teachers of students with disabilities, the Standard Certificate for teachers of students who are gifted and talented, and the Standard Certificate for teachers of students with autism or students with severe intellectual disabilities which were published in the Delaware Register of Regulations on April 1, 2020 (23 Del. Register of Regulations 810), May 1, 2020 (23 Del. Register of Regulations 961), and June 1, 2020 (23 Del. Register of Regulations 992) respectively. As this proposed regulation is nearly identical to the previous, only differences and recommendations for Councils will be included.

As with the prior reviewed proposed regulations, the two proposed sections which require the most scrutiny and consideration are § 1520.6 and § 1520.8.

Proposed § 1520.6 establishes that an educator with a certificate under this section is not required to *renew* the certificate *as long as* their educator's license is valid and current. For background, an educator's initial license is valid for four (4) years at which point they can apply for a continuing license which is valid for five (5) years. After five (5) years, the educator can apply to renew their license. That renewal requires a certain number of professional development hours along with other requirements. The purpose of these professional development hours is to ensure that Delaware educators are continuing to learn and develop their practice, just as other professions are required to do.

The Board does not prescribe specific professional development for educators. This is true for educators possessing one of the many standard certifications that are available, including the certification under proposed § 1520. The only requirements for professional development, found at 14 Del. Admin. C. § 1511.6, are that it should include at least ninety (90) "Clock Hours" which are related to 14 Del. Admin. C. § 1597 (Delaware Professional Teaching Standards), 14 Del. Admin. C. § 1590 (Delaware Administrator Standards), or "appropriate specialty organization standards." Therefore, it is possible that an educator with this certificate will not actually participate in any professional development related to their certification.

Councils may wish to recommend that DDOE consider whether including requirements for renewal of this certificate is warranted. For ease, the renewal of this certificate could coincide with the date of renewal for the educator's license. Proposed requirements for renewal could include activities such as participation in a mandated number of hours (out of the ninety (90) required) of professional development related to this certificate or additional mentoring on top of the current mentoring requirements.

Proposed § 1520.8 establishes an additional route to obtaining a certificate under this section. Specifically, it allows DDOE's Secretary of Education to review and grant certification where the educator does not meet the requirements necessary. This review would be prompted at the request of a local school or school district and would need to be supplemented with documentation showing the educator's effectiveness.

Proposed § 1520.8 mirrors similar language found in 14 Del. C. § 1224, which allows the Secretary to "review licensure and certification credentials on an individual basis and to act upon same at the request of the local school district or charter school provided that the local school

district or charter school is able to document the effectiveness of the applicant.” Although proposed § 1520.8 is aligned with current regulations concerning standard certificates, DDOE cannot forget that educators within this category should be some of Delaware’s most capable educators. Councils may wish to recommend that DDOE remove proposed § 1520.8 or, alternatively, Councils may wish to recommend DDOE remove the language allowing for a review by the Secretary where an applicant does not meet the listed requirements.

In conclusion, Councils may wish to support the proposed amendment with the included recommendations and suggestions.

Proposed DDOE Regulation on 1594 Special Education Director, 24 Del. Register of Regulations 251 (September 1, 2020)

DDOE proposes to amend 14 Del. Admin. C. § 1594, which describes requirements for obtaining the Special Education Director standard certificate (hereinafter “Director Certificate”) pursuant to 14 Del. C. § 1220. DDOE, in cooperation with the Board, is proposing to amend this regulation to add definitions to Section 2.0; clarify the requirements for issuing a Director Certificate; specify the education, knowledge, and skill requirements for obtaining a Director Certificate; add reciprocity requirements; specify the application requirements; and add Sections 7.0-10.0, which concern the validity of a Director Certificate, disciplinary actions, requests for the Secretary of Education to review applications, and recognizing past certificates, respectively.

As with the proposed DDOE regulation on Early Childhood Teacher (24 Del. Register of Regulations 227, September 1, 2020), many of the proposed changes are similar to what has been proposed for other certificates in the past several months. Therefore, only notable differences and recommendations will be included in this review.

DDOE proposes to amend § 1594.1.0 to add a requirement that all special education directors working in Delaware public schools possess the Director Certificate. It also proposes to amend § 1594.4.1.3 to include additional ways to reach the five year experiential requirement. Those additions include (1) working with special education students as an educational diagnostician or special education coordinator; (2) providing pupil personnel services to special education students under a Delaware professional licenses; or (3) supervising staff who teach special education students with satisfactory annual summative evaluations or the equivalent thereof on a state-approved educator evaluation system. This reviewer could not find a definition for “pupil personnel services” in Delaware education statute or regulations; therefore, Councils may wish to recommend that DDOE include a definition for “pupil personnel services” or, alternatively, explain what it means by the term.

Proposed § 1594.7 establishes that a Special Education Director with a certificate under this section is not required to *renew* the certificate *as long as* their educator’s license is valid and current. For background, an educator’s initial license is valid for four (4) years at which point they can apply for a continuing license which is valid for five (5) years. After five (5) years, the educator can apply to renew their license. That renewal requires a certain number of professional development hours along with other requirements. The purpose of these

professional development hours is to ensure that Delaware educators are continuing to learn and develop their practice, just as other professions are required to do.

The Board does not prescribe specific professional development for educators. This is true for educators possessing one of the many standard certifications that are available, including the Director Certificate under proposed § 1594. The only requirements for professional development, found at 14 Del. Admin. C. § 1511.6, are that it should include at least ninety (90) “Clock Hours” which are related to 14 Del. Admin. C. § 1597 (Delaware Professional Teaching Standards), 14 Del. Admin. C. § 1590 (Delaware Administrator Standards), or “appropriate specialty organization standards.” Therefore, it is possible that an educator with this certificate will not actually participate in any professional development related to their certification.

Councils may wish to recommend that DDOE consider whether including requirements for renewal of the Director Certificate is warranted. For ease, the renewal of this certificate could coincide with the date of renewal for the educator’s license. Proposed requirements for renewal could include activities such as participation in a mandated number of hours (out of the ninety (90) required) of professional development related to this certificate.

Proposed § 1594.9 establishes an additional route to obtaining a certificate under this section. Specifically, it allows DDOE’s Secretary of Education to review and grant certification where the educator does not meet the requirements necessary. This review would be prompted at the request of a local school or school district and would need to be supplemented with documentation showing the educator’s effectiveness.

Proposed § 1594.9 mirrors similar language found in 14 Del. C. § 1224, which allows the Secretary to “review licensure and certification credentials on an individual basis and to act upon same at the request of the local school district or charter school provided that the local school district or charter school is able to document the effectiveness of the applicant.” Although proposed § 1594.9 is aligned with current regulations concerning standard certificates, DDOE cannot forget that Special Education Directors need to be some of the most capable individuals and educators in Delaware. These individuals are typically the leading voice when it comes to special education within a particular school district or charter school. Councils may wish to recommend that DDOE remove proposed § 1520.9 or, alternatively, Councils may wish to recommend DDOE remove the language allowing for a review by the Secretary where an applicant does not meet the listed requirements.

DHSS DPH Proposed Regulation 4470 regarding Medical Marijuana, 24 Del. Register of Regulations 258 (September 1, 2020)

16 Del Code 4906A allows the Department, upon petition, to add conditions for eligibility for the Delaware Medical Marijuana Program by regulation. This proposed regulation adds anxiety as a qualifying medical condition but only for access to “CBD-Rich Oil.”¹ A petition to add anxiety was denied in 2017.² The DPH Marijuana Advisory Board has not listed

¹ <https://www.cbdalife.org/benefits-cbd-rich-cannabis/>

² <https://dhss.delaware.gov/dhss/dph/hsp/medmarocpet.html>

any further petitions relating to anxiety on the website and the writer is unclear how this addition came to be. Regardless, it is of some benefit for individuals with anxiety to be able to access CBD Rich oil. It is possible that the state does not wish to run afoul of SAMHSA's restriction on funding for programs that advocate or supply medicinal marijuana to anyone as treatment for a mental health or substance abuse disorder,³ and this is why access is restricted to CBD Oil.. This is speculation, however.

The proposed regulation adds the "CBD Rich" classification to the list of types of registration cards that are issued. They define "CBD Rich Oil" as having near equal components of THC and CBD. They allow home delivery but set up tracking, security and data requirements; and it makes clear that anyone with qualifying diagnoses can access CBD Rich Oils.

Councils may wish to consider asking about background on this regulation, including its potential impact on the current availability of CBD Oil commercially outside of the medical marijuana context.

DHSS DSS Proposed Regulation regarding Lottery winnings and SNAO, 24 Del. Register of Regulations 259 (September 1, 2020)

Federal regulatory changes in 2019 require states to disqualify any household that has substantial winnings due to lottery, gambling, etc. This proposed regulation describes the process by which DSS will implement this change. It does not have any particular impact on people with disabilities.

3. Possible Legislative Initiatives

1. Revamping Equal Accommodations Statute in Title 6. For many years, DLP has battled to get Division of Human Relations to take on disability discrimination cases. Repeatedly, DHR has taken an overly narrow view of the statute and its jurisdiction, consistently taking the position that any case that might also be a violation of the ADA is not appropriate for DHR and that the statute does not require any public accommodation to make reasonable accommodations or modifications. By way of example, a day care center refused to allow its own personnel to monitor a diabetic child's blood sugar and then also refused to allow a nurse to come in to monitor, forcing the family to withdraw the child. DHR argued that because the child already attended the day care, they could not require any sort of reasonable accommodation of the day care center, such as allowing the nurse. Quite absurdly, they indicated that if the day care center had initially refused the child admission at all because of the child's diagnosis or needs, that would have been actionable.

³ <https://www.marijuanamoment.net/feds-withdraw-health-grants-for-schools-that-allow-medical-marijuana-maine-official-says/>

The bill could be overhauled, or language can be added to clarify that discrimination includes a failure to make reasonable accommodations or modifications.

2. Adding language to Title 16 requiring DPC to provide an office, privacy, immediate access to records, a designated complaint box that is accessible to patients to the protection and advocacy system and more timely reporting of critical incidents, grievances and other information, with fines for non-compliance. Over the last two years DSAMH and DPC have systemically reduced access at DPC for the DLP. They have made it much more difficult for DLP staff to access records in a meaningful and timely way. More recently, they booted DLP out of a dedicated office at DPC (after 20 some years) and now are balking about providing a dedicated complaint box. The only way to rectify this situation is to mandate such cooperation.
3. DLP is certain there are other legislative initiatives of interest to SCPD. This would include changes to the Motor Vehicle code related to adaptive equipment and need for additional training and testing.
4. DLP will be making recommendation of several polling sites for SCPD to refer to AAB for review.