



STATE OF DELAWARE  
**STATE COUNCIL FOR PERSONS WITH DISABILITIES**  
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**MEMORANDUM**

DATE: July 29, 2014

TO: Victoria Kelly, Director  
Division of Family Services

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

RE: 19 DE Reg. 6 [DFS Camp Employee & Volunteer Background Check Emergency  
(7/1/15)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Services for Children, Youth and Their Families/Division of Family Services (DFS)/Office of Child Care Licensing's emergency regulation amending its 'Rules for Early Care and Education and School-Age Centers'. The emergency regulation was published as 19 DE Reg. 6 in the July 1, 2015 Register of Regulations. SCPD has the following observations.

As background, a Delaware Background Checks Task Force issued a report on December 31, 2014. In pertinent part, the Task Force recommended that background checks be required for employees and volunteers in youth camps. DFS is implementing the recommendation through an emergency regulation to ensure that background checks are conducted by summer camps operating in 2015. Legislation (S.B. 144) to require background checks for camps was recently enacted but will not be effective for 240 days.

SCPD generally endorses the emergency regulation, but would like to offer the following observation for the Division's consideration. The regulation may be overbroad in categorically barring the employment of anyone with a felony conviction within the past 7 years (§3.4.2.3). SCPD recognizes that this provision is similar to §309(d) in S.B. 144. There is some "tension" between categorically barring employment of individuals with a felony conviction and federal EEOC guidance which discourages consideration of convictions unless the conduct is "job related and consistent with business necessity". See [http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm) For example, if the conviction were for issuing a single \$1,500 "bad check" (11 Del.C. §900) six years ago, such conduct would ostensibly have little bearing on whether an applicant could safely be employed in a summer camp.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or recommendations on the proposed regulation.

cc: Ms. Kelly McDowell  
Mr. Brian Hartman, Esq.  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

19reg6 dscyf-dfs camp employee-volunteer background check emergency 7-27-15