



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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March 29, 2016

Ms. Tina Shockley, Education Associate
Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

RE: 19 DE Reg. 809 [DOE Proposed Post Secondary Education Regulation (3/1/16)]

Dear Ms. Shockley:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to adopt several revisions to its standards covering post secondary institutions and degree granting institutions of higher education. The proposed regulation was published as 19 DE Reg. 809 in the March 1, 2016 issue of the Register of Regulations. SCPD has the following observations.

First, in §1.0, definition of "Recognized Approval", the term should ostensibly be "Recognized Applicant". Compare §§5.3, 6.1, 11.1.2.

Second, the regulation does not address the separate standards for degree-granting law schools appearing in Title 8 Del.C. §125.

Third, §2.3 requires institutions incorporating in Delaware to "provide documentation of official Department approval with any certificate of incorporation filed with the Secretary of State that includes the power to confer academic or honorary Degrees." The content of this section could be enhanced.

A. It would be preferable to require institutions with only "Recognized Applicant" status (which cannot confer degrees) to include some acknowledgment of its lack of authority in its certificate of incorporation. Such institutions can incorporate (§6.1.1) in Delaware and there is potential for misleading the public about its authority to confer degrees if the certificate of incorporation is silent. It would be preferable to amend §6.1. to require the institution to include an acknowledgment of lack of degree-granting authority in its certificate of incorporation.

B. It may be preferable to not simply refer to “power to confer academic or honorary Degrees” but to include the type of approval granted (e.g. Provisional or Full) since institutions are expected to amend certificates based on changes in status. See §§6.2.3 and 6.3.3.

Fourth, the Department may wish to reconsider whether to require that applications be filed in both “hard and electronic” versions per §5.1. There may be some justification for requiring submission in both forms but the DOE may wish to reconsider whether to require duplicate submission in the regulation.

Fifth, §6.1 requires students to be notified of the institution’s lack of authority to confer degrees. The regulation only requires the notice “near the end of the first school year with classes” for associates degrees and “near the end of the second school year with classes” for 4-year degrees. It would be preferable to also require the notice to students at the time of application and/or admission. The DOE should also consider requiring notice to students if degree “approval status is terminated” (§§6.1.8.1.5, 6.2.8.2, and 6.3.6.2).

Sixth, in §6.1.8.1.4 and in §6.2.3, there is a plural pronoun (“their”) with a singular antecedent (“institution”). Substitute “its” for “their”.

Seventh, there are multiple sections requiring an institution to report “changes” since its most recent approval with some examples of changes provided. See §§6.2.6.1.6, 6.3.5.3, and 6.4.4.3. These sections could be improved by explicitly requiring notice of changes in accreditation given its importance. See §§4.1 and 4.2.

Eighth, §6.2.7.4 establishes the following standard:

If a Provisional Approval Institution does not receive Full Approval within four years after the first graduating class, the Department may withdraw all approval and inform the Corporation Division of Delaware that the Institution is no longer authorized to confer Degrees.

It’s unclear what the Division of Corporations would do with the information. It may not have the authority to unilaterally amend the institution’s certificate of incorporation. The DOE may wish to consult the Division to assess whether this section merits revision.

Ninth, Title 8 Del.C. §125 contemplates the inclusion of a DOE endorsement on the certificate of incorporation and amendments of a degree granting institution. Since statuses can change based on several factors, the DOE could consider including a provision in its “endorsement” referring to the published list required in §9.0 of the regulation for current status.

Tenth, in §13.0, SCPD recommends deletion of the word “or” between “action” and “permitted”. The DOE could also consider deleting “or required” since it is superfluous.

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

Sincerely,

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

cc: The Honorable Steven Godowsky, Ed.D, Secretary of Education
Mr. Chris Kenton, Professional Standards Board
Dr. Teri Quinn Gray, State Board of Education
Ms. Mary Ann Mieczkowski, Department of Education
Ms. Kathleen Geiszler, Esq., Department of Justice
Ms. Terry Hickey, Esq., Department of Justice
Mr. Brian Hartman, Esq.
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