

April 30, 2018

Mr. Chris Kenton, Executive Director  
Professional Standards Board  
Townsend Building  
401 Federal Street – Suite 2  
Dover, DE 19901

RE: 21 DE Reg. 770 [DOE Proposed Certificates of Eligibility (April 1, 2018)]

Dear Mr. Kenton:

The State Council for Persons with Disabilities (SCPD) has reviewed The Professional Standards Board and the Delaware Department of Education's (DDOE) proposed regulation related to the issuance of Certificates of Eligibility. Certificates of Eligibility provide temporary certification for teachers of students with disabilities that cannot meet the standard certification requirements, but are working toward satisfying them by participating in an alternative route to certification program. The proposed regulation was published as 21 DE Reg. 770 in the April 1, 2018 issue of the Register of Regulations. SCPD has the following comments.

Certificates of Eligibility were created by Delaware House Bill 286, which passed in 2017 and became effective January 29, 2018.<sup>1</sup> Prior to this law, teachers who did not qualify for a standard teaching certificate could receive an Emergency Certificate if the employing school district or charter school demonstrated the proposed recipient was competent and that the employer would support the proposed recipient in obtaining the skills and knowledge necessary to meet standard certification requirements. House Bill 286 created a new certificate for "teachers of students with disabilities"<sup>2</sup> that do not meet the requirements for a standard certificate in an attempt to staff special education classrooms, while also complying with IDEA requirements.<sup>3</sup> Emergency Certificates still exist, but will now likely only be used for general education teachers.

Certificates of Eligibility are specifically for educators teach students with disabilities and who lack certification. To obtain a Certificate of Eligibility, the employer must satisfy an additional requirement; in addition to demonstrating the proposed recipient's competence and its

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<sup>1</sup> Del. H.B. 286, 149<sup>th</sup> General Assembly. (2017).

<sup>2</sup> The term "teacher of students with disabilities" probably means a special education teacher. However, no definition could be located. It makes practical sense, based on the way the statutes are written, that Emergency Certificates will be issued to general education teachers, while Certificates of Eligibility will be issued to special education teachers. However, this term should be explicitly defined because general education teachers also teach students with disabilities. This might create confusion about which certificate is necessary. The proposed regulation may indirectly define what category of teachers the law applies to because it states the regulation applies to educators pursuing certain certifications.

<sup>3</sup> Del. H.B. 286 syn., 149<sup>th</sup> General Assembly (2017).

willingness to assist the recipient in gaining the skills and knowledge necessary to obtain a standard certificate, the employer must show that the “proposed recipient is participating in a state-approved, appropriate alternative route for teacher licensure and certification program for teachers of students with disabilities.”<sup>4</sup>

Though the DDOE would likely argue that Certificates of Eligibility and Emergency Certificates are distinct from one another, they are both being used for the purpose of allowing schools to utilize teachers that do not satisfy the requirements to obtain a Standard Certification. For this reason, a comparison between the Emergency Certificate regulation and this proposed regulation is informative. There are several potentially important differences between the Emergency Certification regulation and the proposed Certificate of Eligibility regulation.

First, the proposed regulation for Certificates of Eligibility does not require school districts to affirmatively notify parents or guardians that their child’s teacher does not have a standard teaching certificate. 14 DE Admin. C. § 1506, which discusses issuance requirements for Emergency Certificates, contains a provision that requires parental notification if a student is assigned to a teacher with an Emergency Certificate. The employing authority must also submit copies of the parental notification to the DDOE.<sup>5</sup>

The same policy concerns that likely resulted in the addition of the parent notification requirement when a child is being taught by a teacher with an Emergency Certificate likely exist in the Certificate of Eligibility context: a parent’s child is being taught by someone who does not have the “prescribed knowledge, skill or education,” as defined by law. A Standard Certificate is a credential issued to an educator that “has 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>

It may be that parental notification is required under the Every Child Succeeds Act,<sup>7</sup> but it is likely easier and faster to ask for the inclusion of the notification now, rather than determine how Delaware’s Certificate of Eligibility fits into the Federal law.

Another potentially important difference between the Emergency Certificate regulations and the proposed regulation is the competence requirement for license renewal. 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

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<sup>4</sup> 14 Del. C. § 1221.

<sup>5</sup> “Any year that an educator holds an Emergency Certificate, the employing authority shall notify parents of the students within the educator’s responsibility. Parents shall be notified within (60) days of the assignment or the start of the school year each year” 14 DE Admin. C. § 1506.5.1.

<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.”

<sup>7</sup> 20 U.S.C. § 6312(e)(1)(B).

§summative evaluation on DPAS-II or another Department-approved evaluation system.” 14 DE Admin. C. § 1506.2.1. On the other hand, the proposed Certificate of Eligibility regulations, as written, do not make re-issuance of the certificate contingent on the holder demonstrating competence. The only requirement is that the teacher makes progress toward earning a Standard Certificate by continuing to participate in an alternative-route-to-certification program. It does not appear that the competence requirement would be somehow backed into the law indirectly – for instance, no provision states that the teacher must demonstrate competence for continued participation in an alternative route to certification program. It is not clear that the 14 *Del. C.* § 1221 competence requirement comes in to play during a certificate *renewal* decision.

Next, one minor consideration is that given the date Certificates of Eligibility expire, it may not be possible for teachers with this certificate to participate in the Extended School Year. Depending on how many special education teachers are utilizing the Certificate of Eligibility, this could potentially create a shortage of qualified teachers during the summer months.

The SCPD is seeking the following changes to the proposed regulation: Add in a parental notification and a competence requirement for renewals and add the summer months. The SCPD is also seeking clarification whether Regulation §1507 will be updated to reflect its application to Certificates of Eligibility for special education teachers. It is worth noting that the proposed regulatory change does not address the specific requirements of an ARCP for special education teachers.

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

Sincerely,



Jamie Wolfe  
State Council for Persons with Disabilities

cc: The Honorable Susan S. Bunting, Ed.D. Secretary of Education  
Ms. Susan Haberstroh, Education Associate, Department of Education  
Dr. Dennis Loftus, State Board of Education  
Ms. Mary Ann Mieczkowski, Department of Education  
Ms. Laura Makransky, Esq., Department of Justice  
Ms. Terry Hickey, Esq., Department of Justice  
Ms. Valerie Dunkle, Esq., Department of Justice  
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