



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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December 22, 2011

Mr. Charlie Michels, Executive Director
Professional Standards Board
Townsend Building
401 Federal Street
Dover, DE 19901

RE: 15 DE Reg. 728 [DOE Proposed Emergency Certificate Regulation]

Dear Mr. Michels:

The State Council for Persons with Disabilities (SCPD) has reviewed the Professional Standards Board's [in collaboration with the Department of Education (DOE)] proposal to amend its Emergency Certificate regulation published as 15 DE Reg. 728 in the December 1, 2011 issue of the Register of Regulations. SCPD has the following observations.

First, there is a "typo" in §5.3, i.e., "priot" should be "prior".

Second, an emergency certificate will automatically expire on June 30 of the approved school year (§§3.1 and 6.2). This would be problematic for students enrolled in 12-month or ESY programs since their teacher's certification could end prior to the end of the summer term. This could be disruptive. Moreover, the number of students entitled to 12-month programs is significant. Title 14 Del.C. §§1703(e)(f), authorizes 12-month programs for all students with classifications of severe mental disability, trainable mental disability, autism, TBI, deaf-blindness, or orthopedic disability. The 2010-11 DOE pupil count reflects the following statistics: severe mental disability - 89; trainable mental disability - 460; autism- 1,020; TBI - 49; deaf-blindness - 68; and sensory physical disability - 361. This results in an aggregate of 2,047 students. Obviously, students with these complex conditions benefit from instructional continuity. SCPD recommends that the DOE change the expiration date to August 30. The DOE could still require districts to apply for an extension by June 30 for the following school year (§§3.8.4 and 5.3).

Third, the regulation is extremely strict in allowing no exceptions to filing an application for an extension by June 30 (§§3.8.4, 5.3, 6.2, and 6.3). A categorical "no-exceptions" approach will predictably lead to unfair results (e.g. great teacher whose paperwork is not

completed by district due to unexpected illness of preparation personnel). SCPD recommends authorizing consideration of a late application based on good cause or exigent circumstances. If the term of the certificate is extended to August 30 as recommended above, the DOE would not be prejudiced by reviewing an application submitted on July 15 or August 1.

Fourth, the regulation does establish an entirely new approach to the emergency certificate. The current regulation established a three (3) year duration for the emergency certificate (§3.1). The new regulation authorizes a one (1) year certificate subject to a one-time renewal only based on exigent circumstances (§§3.4 and 3.8.1). Reasonable persons could differ on the advantages of the current approach versus the new approach. On the one hand, shortening the duration of the emergency certificate may “prompt” covered persons to be more diligent in completing requirements for a standard certificate and lead to children being educated by more individuals with standard certificates. On the other hand, requiring completion of qualifications for a standard certificate in one year versus three years may be too rigid and unrealistic in some cases.

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 Lillian Lowery
Dr. Teri Quinn Gray
Ms. Mary Ann Mieczkowski
Ms. Paula Fontello, Esq.
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Developmental Disabilities Council
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