



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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July 2, 2012

Ms. Susan K. Haberstroh
Education Associate
Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

RE: 15 DE Reg. 1652 [DOE Proposed Charter School Regulation]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to amend its charter school regulation. The proposed regulation was published as 15 DE Reg. 1652 in the June 1, 2012 issue of the Register of Regulations. SCPD is aware that the Governor's Advisory Council for Exceptional Citizens (GACEC) convened an ad hoc committee which informally compiled some observations and recommendations on the proposed standards. See attached list of five (5) "main concerns". SCPD considered these observations in developing this commentary. However, SCPD did not address the subsidiary forms implementing the regulation.

First, §3.6 authorizes a "Highly Successful Charter School Operator" to bypass any annual ban on new charter school applications to address the needs of students whose current charter school is closing. The definition of "Highly Successful Charter School" is included in §2.1. This is a salutary concept which is loosely based on Title 14 Del.C. §511(n). See also Title 14 Del.C. §511(e)(2). SCPD's concern is that there are charter schools which focus on "at risk" students. See §4.2.1.5. If such a charter school were closing, it would be logical for another charter school serving "at risk" students to be solicited to apply for a charter to cover the students in the school which is closing. This would be undermined by the definition of "Highly Successful Charter School" which categorically requires above average performance on student assessment tests. The DOE should consider modifying the definition of "Highly Successful Charter School" to allow a charter school for "at risk" students to qualify without meeting the "above average performance" standard. Parenthetically, SCPD also recommends not capitalizing "Operator" in §3.6.

Second, in §3.2, the DOE should reconsider whether the word “Renewal” should be capitalized. References to renewal are not capitalized in the balance of the regulation. See, e.g., §§3.6 and 3.9.

Third, §4.3.1 “red flags” the need for a charter school to include the capacity for “summer school”, “extra instructional time”, and other remedial services for underperforming students in its program based on Title 14 Del.C. §512(6). It would be preferable to add another sentence to implement the recently adopted Title 14 Del.C. §122(b)(24). This is a new statute which requires charter schools to offer supportive instruction (e.g. homebound; instruction in hospitals) which charter schools could easily overlook. It does not appear in Title 14 Del.C. Ch. 5. The following sentence could be added: “The educational program shall include the provision of supportive services conforming to 14 Del.C. §122(b)(24).”

Fourth, in §4.5.1.1, the reference and citation to the Gun Free Schools Act does not match that in the DOE’s “Compliance with the Gun Free Schools Act” regulation, 14 DE Admin Code 603.

Fifth, in §10.4, it would be preferable to include a recital that the results of the Performance Review would also be published on the DOE’s Website. For example, the second sentence could be amended to read as follows: “The Department shall provide the results of the Performance Review to the school and publish the results on the Department’s Website.”

Sixth, §12.0 literally requires a new member of the charter school’s board of directors to directly submit the member’s criminal background check results to the DOE. This raises two (2) concerns.

A. Title 14 Del.C. §511 (q) recites that the criminal background results are “confidential and may only be disclosed to the chief officer and one additional person in each authorizing body.” Read literally, the statute arguably precludes the DOE from issuing a regulation requiring the submission of the results to the DOE. The DOE may wish to assess whether it needs to have the results versus some verification that the check has been completed and the member is not disqualified.

B. If the results are to be shared with the DOE, it would be preferable for the charter school, not the member, to submit the results to the DOE. Title 11 Del.C. §8571 contemplates the criminal background check results being supplied to the charter school. Although Title 14 Del.C. §511(q) envisions the criminal background check results also being shared with the board member, it would still be preferable for the charter school to share the results with the DOE to reduce prospects for fraud.

Seventh, the overall regulation is somewhat myopic in focusing on academic performance to the exclusion of other factors which make a school “successful”. For example, Section 4.2 contains multiple references to the State Assessment System. Section 4.2.1.4 defines the scope of the Performance Agreement as only covering

organizational, academic, and financial performance. Charter schools are intended to be “innovative” and not “cookie cutter” institutions. See Title 14 Del.C. §501 and 506(b)(3)c. If a school focuses on the arts (dancing; acting; singing), solely evaluating that school based on academics ignores the primary reason students attend the school. Similarly, for a military charter, it would be logical to assess what percentage of the student body who choose to apply to enlist in the Armed Services are accepted. Other factors to consider in assessing “performance” would include statistics on discipline, attendance, graduation, participation in extracurricular activities, substantiated special education and non-special education complaints to DOE, student satisfaction, and parent satisfaction.

Eighth, neither the statute nor §4.2.1.5 define “students at risk of academic failure”. The DOE may wish to include a definition to provide guidance in this context.

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 Mark Murphy
Dr. Teri Quinn Gray
Ms. Mary Ann Mieczkowski
Ms. Paula Fontello, Esq.
Ms. Terry Hickey, Esq.
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Main concerns with Regulation 275 and the Framework:

- 1) Section 4.2.1.5 – this section used to apply only to schools with an enrollment preference for students in special education. As it is written in the current regulation, it will apply to any school and will in essence give any school a blanket waiver from all performance measures.
- 2) Section 2.1.c of the Academic Performance Framework – concern that the growth average model will create a dis-incentive for charter schools to accept students in special education as it will lead to lower overall scores
- 3) Concern over the use of the term ‘Academic Performance’ rather than the more inclusive ‘Educational Performance’ throughout the Framework documents. Fear that academic performance will not take functional skills into consideration when determining growth
- 4) Question on the definition of ‘At-Risk’ as used in the Framework. Recommend the definition of At-Risk be included in the terms defined in 275.
- 5) Recommend the inclusion of information on school climate/school environment as there is a body of evidence to support that positive school climates lead to greater academic success.