



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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October 26, 2018

Mr. Chris Kenton, Executive Director
Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

RE: 22 DE Reg. 259 [DDOE/Professional Standards Board for Paraeducator Permit Requirements, 22 Del. Register of Regulation 259 (October 1, 2018)]

Dear Mr. Kenton:

The State Council for Persons with Disabilities (SCPD) has reviewed Delaware Department of Education (DDOE) proposed an amendment to Section 1517 in August 2018. The August 2018 version received no comments; however the Board and DDOE subsequently made substantive changes, and therefore republished the proposed amendment for comment. The proposed regulation was published as 22 DE Reg. 187 in the October 1, 2018 issue of Register of Regulations.

There is no statutory guidance on paraeducator permit requirements or procedure; the Legislature delegated that authority to the Professional Standards Board ("Board"). The Board enacted 14 DE Admin. Code 1517, which lists the qualifications necessary to obtain paraeducator permits. It also states the rules for permit renewal, denial, and revocation.

The SCPD is seeking an amendment to the proposed amendment. First, the proposed amendment eliminates Section 8.0, which explicitly defines when permit applications will be denied and under what conditions a permit can or must be revoked. The proposed amendment also appears to take away the hearing right afforded to those who have their permit denied or revoked.

Section 1507.7.0 requires applicants to disclose their criminal history, and states that failure to do so "is grounds for denial or revocation." Section 8.0 states that a permit application may be denied if the individual fails to satisfy the requirements to obtain a permit or is "unfit." It also indicates that a permit may be revoked if the holder is fired for enumerated reasons and must be revoked if the individual made "a materially false or misleading statement in his or her permit application." An individual whose permit is denied or revoked may request a hearing. The August 2018 version of the proposed amendment did not make substantive changes to either of the sections on denial

and revocation of permits, or to the one on hearing rights.

The current proposed amendment retains Section 7.0 (renumbered as 9.0); this is the requirement that applicants disclose criminal history and that failure to do so may result in application denial or a permit revocation. However, Section 8.0's additional guidance on denial and revocation, and provision of a hearing right is removed.

It may only be a minor problem that the Section 8.0 guidance on denial is removed; Section 7.0 states that failure to disclose criminal history may result in a denial, and language elsewhere in the regulation allows the reader to deduce other situations that will result in a denial.

However, the removal of guidance on when revocation may occur appears more problematic. The proposed amendment states "a Title I, Instructional, or Service Paraeducator Permit shall be valid for five (5) years ... unless revoked." Section 9.0 (7.0 in current regulation) is the only act identified that may result in permit revocation. If failure to disclose criminal history may result in permit revocation, it seems likely there are other situations where it would be good policy to revoke a permit. For instance, if a paraeducator commits an offense against a child after they have already disclosed past criminal history and obtained their permit, it seems useful for the Board to have the authority to consider revocation. If the Board intends to revoke permits in circumstances other than that described in Section 9.0, it should define them in the regulation; individuals must hold permits to obtain and retain employment as paraeducators. Holders should be aware of what behaviors/actions could result in permit revocation since there may be serious consequences affecting their careers and financial stability.

Finally, removing Section 8.0 appears to take away the right to a hearing if a permit application is denied or a permit is revoked. Other statutes and regulations that award hearing rights do not appear to apply to paraeducators; 14 DE Admin. Code 1515 outlines hearing rights and procedures, but states "this regulation shall apply to license denial actions under 14 Del. C. § 1217 and license disciplinary actions under 14 Del.C. § 1218." These sections address teacher certification and licensure, not paraeducator permits. Similarly, 14 Del. C. §§ 1217-1218A, 1222 discuss hearings, but all in situations involving adverse actions taken against a license or certificate; these are teacher credentials, not paraeducators. As discussed, *supra*, denial or loss of a permit may have serious consequences on an individual's life. Offering hearing rights is likely good policy when someone's livelihood is at stake.

An additional concern about this amendment is that it may disqualify people with petty criminal backgrounds from obtaining a permit. The proposed amendment would prevent a permit from being issued to someone who has "engaged in misconduct in violation of 14 Del. C. § 1218."

First, the term "engaged in misconduct in violation of 14 Del. C. § 1218." is not defined. Presumably the Department would look at conviction or plea records to determine whether someone "engaged in" the "misconduct" described in 14 Del. C. § 1218, but that is not clear from the text. It may be helpful for the regulation to explain how it will determine whether an applicant "engaged in misconduct."

14 Del. C. § 1218 lists numerous crimes and improper acts. For less serious offenses, the Secretary of Education (“Secretary”) has the option to revoke, limit, or suspend a teacher’s credentials. Commission of other crimes results in mandatory revocation, limitation, or suspension. Section 1218 applies to teacher credentials, not paraeducator permits. One must look to the proposed amendment to see how commission of a § 1218 offense will impact a permit applicant. The proposed regulation does not utilize permissive language; the Department “shall issue... [a] Permit to an ... applicant who has not engaged in misconduct in violation of 14 Del. C. § 1218.” (emphasis added.) In other words, if an applicant has engaged in misconduct described in § 1218, the Department cannot issue a permit. For example, Marijuana possession is a § 1218 offense. The way the proposed regulation is currently written, it appears to prevent the Department from issuing a paraeducator permit to someone who was convicted or pled guilty or nolo contendere to Marijuana possession at any point in their life. This is a barrier to employment for someone who is otherwise qualified, and either made a mistake or has been successfully rehabilitated.

The SCPD is seeking an amendment of the proposed regulation because it removes guidance for when permits may be denied or revoked, eliminates hearing rights for an individual whose permit has been denied or revoked, and may present people with petty criminal backgrounds from obtaining permits.

Thank you for your consideration and please contact SCPD if you have any questions.

Sincerely,



Nicholas J. Fina, Ed.D.
Chairperson - State Council for Persons with Disabilities

cc: The Honorable Susan Bunting – Department of Education
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