

**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS (GACEC)
GENERAL MEMBERSHIP MEETING**

7:00P.M., March 15, 2016

**George V. Massey Station, Second Floor Conference Room
516 West Loockerman Street, Dover, DE**

MINUTES

MEMBERS PRESENT: Chairperson Robert Overmiller, Cathy Cowin, Nancy Cordrey, Bill Doolittle, Karen Eller, Ann Fisher, Bernie Greenfield, Terri Hancharick, Brian Hartman, Thomas Keeton, Danna Levy, Karen McGloughlin, Mary Ann Mieczkowski, Bill O'Neill, Jennifer Pulcinella, Ron Russo

OTHERS PRESENT: Maureen Whelan/ DOE Adult Education; Linda Smith/DOE; Sandra Miller/DVR; and Brigitte Hancharick.

Staff present: Wendy Strauss, Executive Director; Kathie Cherry, Office Manager and Sybil White, Administrative Coordinator.

MEMBERS ABSENT: Dafne Carnright, Carma Carpenter, Al Cavalier, Jane Donovan, Emmanuel Jenkins, Carrie Melchisky, Beth Mineo, Shawn Rohe, Howard Shiber, Brenné Shepperson, Lavina Smith, Kirstin Wolfington

Chairperson Robert Overmiller called the meeting to order at 7:10p.m.

PUBLIC COMMENTS

Member Keith Morton, Executive Director of the Parent information Center (PIC) gave a brief presentation on the development of technical assistance for parent councils. PIC has made a commitment to be as supportive as possible of the new parent councils. Under SB 33 each district is required to support parent councils for parents of students involved in special education. These are district wide councils, not specific to each school. An advisory group was established and includes members from schools, GACEC, PIC, Autism Delaware and other interested stakeholders. Keith gave examples of some of the recommendations of the advisory group, including a statewide calendar of events and online forum for the councils which would need to be monitored. Keith indicated that PIC is interested in doing this. He spoke about the packet of information that was designed by the advisory group to give parents access to information in an easy to access format. Keith indicated that they envision it as a digital downloadable resource that can be updated as needed. Keith spoke of the need for ongoing trainings for members of the parent councils. Wendy asked about training for those from the disability community so that the message is consistent to everyone involved. Keith indicated that this was an area that PIC was working on.

Member Bill Doolittle provided comments on the requirements for getting accommodations for SAT

exams. Bill indicated that in his initial meeting with DOE (Department of Education) he was told the requirements would not be invasive. Bill described the requirements from College Board (the governing body of the SAT) as being excessive. The requirements include Psychiatric evaluation, medication taken, teacher evaluation, as well as documentation that supports the student's need for assistance with timed testing, most likely the results from test both timed and with extended time. Bill indicated he has written an initial brief and will forward it to staff to be distributed to Council.

GENERAL MEMBERSHIP MEETING

Robert asked for and received a **motion** to approve the March agenda.

Motion was approved.

Robert asked for and received a **motion** to approve the February minutes.

Motion was approved. Robert asked for a **motion** to approve the February financial reports.

A **motion was made and approved** to accept the financial report as submitted.

DOE REPORT

Mary Ann gave an update on the State Systemic Improvement Plan (SSIP). The presentation is attached for your reference. The three year plan is concluding phase two and will begin phase three. The phase two report is due to OSEP (Office of Special Education Policy) by April 1st. Next year will be the first year of implementation and a report on that phase will be due on February 1, 2017. At the conclusion of her presentation Mary Ann asked for any questions from Council. Sonya Lawrence stated she was happy to see that cultural competency was included, she inquired if that included braille readers and encouraged Mary Ann to include it if it was not already being examined. Thomas Keeton asked if teachers involved would be provided with a rubric, Mary Ann indicated that a rubric would be provided. Karen McGloughlin stated that she thought the whole process was wonderful. Karen Eller added that she thought it was a very collaborative effort and she was happy to see that so many teachers were included.

Robert stated that it was time to elect the Vice Chair and that he would turn it over to Terri from the nominating committee. Prior to the vote, discussion ensued about the by-laws and whether there was a need to elect a chair elect as is outlined in the by-laws. Robert stated that the by-laws needed to be changed and that would take place over several meetings. There was some discussion as to whether Dafne, who was elected chair at the February meeting was the chair elect or whether that was a separate position. Wendy outlined that for the last 18 – 20 years chair elect in the organizational chart was the person elected in January who maintained the position until they officially take over as chair in July. Wendy discussed the by-laws with the Deputy Attorney General (DAG) who advises the Council and was advised to revise the by-laws to eliminate the position of chair elect as it is redundant. Brian Hartman recommended that the by-laws be changed prior to any vote. Further discussion ensued regarding the change to the by-laws. The DAG recommended eliminating the statement for changes to the by-laws to be read at two consecutive meetings since it is not standard protocol. The changes are indicated by a strikethrough in the copy of the by-laws handed out this evening. After much discussion it was decided that the vote for the Vice Chair position would be held as scheduled this evening. Terri

announced that Bill Doolittle indicated he was interested in running for Vice Chair. Robert then asked for any additional nominations from the floor. Jen Pulcinella nominated Terri Hancharick, who accepted nomination.

Robert asked for and received a **motion to close the nominations.**
Motion was approved.

Robert announced that ballots would be handed out and asked Council members to list the name of the person they were voting for on the ballot. Ballots were collected and Wendy and Sybil proceeded with counting the votes. After the votes were counted and confirmed, Wendy announced that Terri was elected vice chair. Congratulations to Terri.

Robert announced that Senate Bill 180 (age of majority) will be heard in the House Chamber on March 18, 2016 at 2:30. Robert asked anyone who was available to attend in support of the legislation.

DIRECTORS REPORT

Wendy provided an update on the new and improved GACEC website. The new website should be available in July. An update was given on the videos being produced for the DeIDHub website. The videos outline how consumers can access the Division for Developmental Disabilities Services (DDDS), the Division for Vocational Rehabilitation (DVR) and Dart services. Wendy deferred to Brian and Terri regarding their meeting with the offices of Senator Carper and Senator Coons. Brian stated that the meeting was an information sharing meeting. Assistive technology, the Brain Injury Trust fund, the Home and Community Based setting rules and some pending federal legislation were among the topics discussed. Wendy shared that there is a meeting with the School Chiefs in May where she and some other advocates will talk about transition and the importance of transition coordinators in each school. Wendy provided an update on the early childhood disability awareness curriculum. Over 40 teachers have been trained to use the curriculum. Wendy thanked Mary Ann for sending information about the districts summer reading programs. Only four districts did not supply information to DOE so they will be receiving a letter from Council requesting that information. Finally Wendy shared information about the Joint Strategic Planning Retreat to be held on April 7, 2016 at the Duncan Center in Dover. Wendy encouraged all who could attend to do so. She shared that the information gathered at this retreat will be beneficial for Council in planning a path forward at our annual retreat in October.

COMMITTEE REPORTS

ADULT TRANSITION SERVICES

Cathy reported that the group heard from Maureen Whalen regarding prison education. Maureen discussed the difficulty in recruiting educators for the prison education system. Training requires rigorous physical training which excludes some. Maureen also discussed the gap when teachers are

lost as it can take 6-8 months to replace educators. Mary Ann interrupted to share that DOE has received a self-assessment from OSEP to ensure that young people in the prison system are receiving FAPE (free appropriate public education). Maureen shared that the prison education system is working closely with DVR since the passing of the Workforce Innovation and Opportunity Act (WIOA). Thomas Keeton shared that in his opinion the issue in prison education is that inmates do not disclose their need for fear of being viewed as weak. Cathy shared that Maureen also mentioned the issue of not disclosing disability information in her presentation. DOE applied for support from the National Technical Assistance Center on Transition (NTACT) and were told today that they were approved for the grant. The grant goals are geared towards advancing transition initiatives.

CHILDREN AND YOUTH

Linda Smith of DOE presented to the committee and gave an overview of the Positive Behavior Support (PBS) project. Linda shared information about the pilot program involving the Student Success grant. Linda would like to present to the full Council in the fall because additional data will be available at the end of the school year. Linda also extended an invitation to an upcoming training.

INFANT AND EARLY CHILDHOOD

The group met with Mary Ann regarding a second unit count for early childhood. Jen shared that the group was advised that it was a legislative issue. Mary Ann advised that it is not that a second count is not possible, it is just not happening now. If it is to happen, Delaware Code would need to be changed. Jenn shared that the group would like to contact Attorney General Denn regarding the issue. Jen also spoke about the Delaware School Climate survey and her doubts that it could provide reliable information.

POLICY AND LAW

Brian Hartman presented at the request of Chair Keith Morton. The committee recommended action on items 3-7 of the March Legal Memorandum that was shared with Council previously. On item 8, the committee recommends Council share comments with DOE, State Board and the Division of Corporations with clarification that both 5.1.0 and §6.1.7.3 refer to a “recognized approver” while other identified sections use the term “recognized applicant”.

This recommendation came as a motion from the committee, no second was required.

Motion approved.

Commentary on the regulations was as follows:

3. DPH Final Personal Assistance Services Regulation [19 DE Reg. 852 (3/1/16)]

GACEC commented on the proposed version of this regulation in November, 2016. The Division of

Public Health is now adopting a final regulation with some technical amendments prompted by the commentary.

First, the Council recommended a grammatical correction. The Division does not mention the comment and retained the problematic sentence. Parenthetically, the sentence violates §4.2 of the Administrative Code Style Manual which recites as follows:

Gender

Avoid using pronouns that include gender. Use the noun which the pronoun would replace. Avoid use of “his/her”, “he/she”, and “(s)he”. The general use of the masculine gender is addressed in 1 Del.C. §304 of the Delaware Code.

Second, the Council questioned a requirement that an agency “shall only provide services in the county in which the agency is located and/or the county(ies) which are immediately adjacent.” The Councils noted that the limitation unnecessarily limited consumer choice of providers and violated the Administrative Code Style Manual by including a substantive standard in a definition. The Division declined to remove the limitation based on the rationale that “skilled home health agencies (sic personal assistance services agencies) need to be in close enough proximity to their patients and employees/contractors to provide adequate supervision.” At 852. The Division did effect revisions to remove the limitation from a definition to conform to the Administrative Code Style Manual.

Third, the Council questioned a categorical ban on toenail care. The Division does not mention the comment.

Fourth, the Council objected to a ban on the use of “healthcare” by personal assistance agencies in their title or advertising. The Councils noted that personal care workers are explicitly authorized to perform “healthcare acts” by statute. The Division does not mention the comment.

The Division of Public Health (DPH) recites that the regulations “have been reviewed by the Delaware Attorney General’s office and approved by the Cabinet Secretary of DHSS. At 853. The Council may wish to consider sharing a concern with the DHSS Secretary and Attorney General since staff may benefit from training in both the Administrative Procedures Act and Administrative Code Style Manual. The APA requires agencies to include a summary of information submitted and findings based on the information submitted. See 29 Del.C. §10118. Substantive comments from multiple state agencies should not simply be ignored.

4. DFS Proposed Criminal History Record Checks for Child Care Person Reg. [19 DE Reg. 821 (3.1.16)]

The Division of Family Services proposes to repeal its current criminal background check standards for persons involved in child care and substitute a new set of standards.

In general, the standards are comprehensive and prescriptive. The committee has only one significant concern. The new regulation applies its standards to an “employee” which is defined as including paid personnel, volunteers, and persons with direct access to children, adult household members of child

care homes, and applicants to become foster care providers, respite providers, adoptive parents, and their household members. See §2.0, definition of “employee”. While this may be the approach adopted in the statute [Title 31 Del.C. §309(b) (9)], there are several problems with this approach.

First, while the definition of “employee” covers this long list of persons, many regulatory sections refer to employees as distinct from volunteers, foster parents, etc. Compare, e.g., §2.0, definition of “child-serving entity”, §4.6.1.1, §4.7.1, and §5.1.1. If the definition of “employee” covers volunteers, foster parents, etc., it makes no sense to have separate references.

Second, the Administrative Code Style Manual provides the following guidance:

7.2. General Guidelines

In general, keep the language of the text as clear and simple as possible. When drafting, remember that documents should be written so that the general public can understand them. Avoid using language that only individuals with specialized knowledge can understand. Consistency of expression, logical arrangement, and adherence to accepted usage aid readability.

Strive for consistency of terminology, expression, and arrangement. Avoid using the same word or term in more than one sense. Conversely, avoid using different words to denote the same idea. ...

In contrast, the regulation sometimes refers to “employment” as distinct from volunteering or serving as a respite, foster parent, or adoptive parent. Compare §§4.2, 4.4, 4.6.1.1, 4.7.1, 7.1, 7.1.1.1.

Third, encompassing many “non-employees” within the definition of “employee” is counterintuitive and confusing. It is akin to having a definition of “red” and defining “red” as including blue, green, and yellow. It is “odd” to characterize volunteers and household members of foster, respite, and adoptive homes as “employees”.

Fourth, the title to the regulation still refers to “child care persons” which was the term used in the prior regulation (§4.1). This term is preferable to “employee” since a variety of persons can be listed under this definition without the term being counterintuitive and confusing.

For the above reasons, the Division may wish to revert to using the current regulatory term, “child care person”, rather than “employee” and otherwise revising the regulation for consistency.

The Council may wish to consider sharing the above observations with the Division.

5. DFS Proposed Child/Health Care, Public School & Camp Registry Ck. Reg. [19 DE Reg. 822 (3/1/16)]

The Division of Family Services (DFS) proposes to amend its child protection registry standards to conform to enactment of S.B. No. 144 in the 148th General Assembly with an effective date of April, 2016.

The committee discussed the following observations.

First, the regulation appears to omit provisions related to student teachers implementing Title 31 Del.C. §309(e) (1). That statute contemplates submission of registry information to the student teacher's college/university while the regulation only envisions submission of the information to an employer (which does not include a college/university).

Second, §6.4 suggests that the employer is only "requested" to provide a copy of the results to an applicant for employment. The statute envisions the Division of Services for Children, Youth and their Families (DSCY&F) providing the summary to the individual. See, e.g., Title 31 Del.C. §§309(e) (1) (a) and 309(e) (1) (c). Cf. Title 31 Del.C. §309(e) (2) and (3) [DSCY&F shares determination with individual].

Third, in §3.0, the definition of "person seeking employment" and §4.0 are inconsistent. The former includes volunteers and contractors within the scope of "person seeking employment" while the latter establishes a separate subpart (§4.2) for such persons.

The Council may wish to consider sharing the above observations with the Division.

6. DOE Proposed District & School Emergency Preparedness Policy Reg. [19 DE Reg. 810 (3/1/16)]

The Department of Education proposes to repeal this regulation in its entirety based on the following rationale:

This regulation is being repealed in order to eliminate confusion for districts and charter schools in terms of the policy to follow with regards to emergency preparedness. These entities are to comply with the 29 Del.C. §8237, otherwise known as the Omnibus School Safety Act (OSSA), and therefore this regulation is no longer needed.

At 810.

The committee discussed the following observations.

The Omnibus School Safety Act (OSSA) makes the Department of Safety and Homeland Security primarily responsible for emergency preparedness in public schools. The Act includes the following provision:

(c) The Department ...shall have the overall responsibility for the implementation of the act. In connection therewith, the Department's duties and responsibilities shall include but not be limited to:

...(5) In consultation with the Department of Education, adopting such rules and regulations as shall be necessary or desirable to implement the provisions of the act;...

The Administrative Code reveals no Department of Safety & Homeland Security regulations implementing the law. Literally, regulations are optional under the statute.

The Department is also responsible for submission of a progress report “to the General Assembly by May 31 of each year until such time that implementation of the program is completed and it is fully operational.” See Title 29 Del.C. §8237(g).

The Council may wish to comment that repeal of the DOE regulation appears warranted given the statutory responsibility of the Department of Safety & Homeland Security under the OSSA. However, the Council may wish to inquire about the status of any regulations authorized to be developed “in consultation with the Department of Education” under Title 29 Del.C. §8237(c) (5).

7. DOE Proposed Emergency Certificate Regulation [19 DE Reg. 812 (3/1/16)]

The Department of Education proposes to revise its educator emergency certificate regulation based on the following rationale:

This regulation is being amended to provide current formatting and to eliminate unnecessary language, as well as to allow the Department of Education the ability to process some Emergency Certificates automatically for those enrolled in an approved Alternate Routes program.

At 812.

The committee discussed the following observations.

First, an educator is generally approved for a one-year emergency certificate (§3.1.1) which can be extended for a second year (§3.1.3) and third year based on exigent circumstances (§7.5). The intent of the regulation is to offer the educator some time to achieve a standard certificate (§7.2). However, the following limitation is being stricken:

~~3.10. An Emergency Certificate shall not be issued more than once to an individual for a specific Standard Certificate.~~

This results in ambiguity. Consider the following:

A. If an educator has had an emergency certificate (for 1-3 years) without achieving a standard

certificate, could an application be subsequently filed for the educator to obtain a new emergency certificate? This would not be a renewal of the original application but a new application. In theory, an educator could be approved for a series of emergency certificates with some hiatus between applications. In some cases the educator might have good reason for placing efforts to achieve a standard certificate on hold for a few years (e.g. battling cancer; sequential pregnancies). For clarity, the regulation should address whether there are any limitations on multiple applications for an emergency certificate.

B. If an educator has an initial emergency certificate, could an application be filed for a new emergency certificate instead of a renewal? For example, if an educator changed employer, the new employer might prefer the prospect of having an approved educator for 2-3 years rather than seeking a transfer of the certificate correlated with 1-2 years of maximum extension. Alternatively, if an educator has an initial emergency certificate, but has made zero progress towards qualifying for a standard certificate, the employer could not obtain an extension (§6.2.2.1; §8.0). Could that employer or a new employer apply for a new initial emergency certificate?

Second, the current regulation requires the employer to develop a written “plan” outlining the expected steps towards achieving a standard certificate. See current §§3.7.1.3, 4.1.4, and 5.1.2. The requirement of a written plan is being deleted. The new standard (§4.1.4) is somewhat amorphous. The DOE may wish to reconsider the deletion since it provides a clear, single source of reference for the employer, educator, and DOE.

The Council may wish to share the above observations with the DOE and SBE.

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

The Department of Education proposes to adopt several revisions to its standards covering post-secondary institutions and degree granting institutions of higher education. The standards are comprehensive and prescriptive.

The committee discussed 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 is 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, the committee recommends deletion of the word “or” between “action” and “permitted”. The DOE could also consider deleting “or required” since it is superfluous.

MEMBERSHIP COMMITTEE

Chair, Dana Levy would like to schedule a meeting with members of the committee.

PERSONNEL COMMITTEE

There was no report at this time.

OUTSIDE COMMITTEE UPDATES

There were no outside committee updates shared.

CHAIR REPORT

Robert reiterated that Senate Bill 180 is being heard on March 16 at 2:30. It is important that you attend if you can do so. Robert reported that the unit count taskforce meeting on the evening of March 14th was not very productive because a lot of data was presented. He feels that the majority of the members are not interested in changing the funding process but rather making changes to the current system. The group has asked for an extension for turning in the final report.

Letters and responses can be found in the binder at the front of the room.

A motion was made and seconded to adjourn the meeting. The meeting was adjourned at **9:10 pm.**