

June 26, 2014

Elizabeth Timm  
Office of Childcare Licensing  
1825 Faulkland Road  
Wilmington, DE 19805

**RE: DFS Emergency Camp Personnel Criminal Background Checks Regulation [17 DE Reg. 1124 (June 1, 2014)]**

Dear Ms. Timm:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the emergency regulation issued by the Department of Services for Children, Youth and Their Families/Division of Family Services (DFS), effective May 19, 2014, which addresses the lack of any statutory or regulatory requirement that persons employed or volunteering in summer camps undergo background checks. The regulation addresses this by requiring checks of criminal convictions and the Child Protection Registry. Council agrees that checks of prospective employees should be undertaken. However, some provisions in the proposed regulation may be considered too extensive.

First, §3.3.1.1 recites as follows:

No employee, owner, operator or volunteer may work or volunteer in a youth summer camp if convicted of a sexually related offense(s) or other offenses against children.

Council recognizes that DFS has adopted similar language in other regulations. *See, e.g.*, 17 DE Reg. 332, 335, §6.1 (September 1, 2013). However, the categorical ban against employment of anyone with a conviction of an offense against a child is too sweeping. No time limit is mentioned so a conviction occurring 50 years ago would continue to be a bar to employment. Convictions can be minor and present negligible evidence of a danger to children. Consider the following examples:

A. A parent allowed his 17 year old to ride a bike without a helmet resulting in a conviction under Title 21 Del.C. 4198K(b).

B. An 18 year old had an altercation with a 17 year old in high school 30 years ago resulting in

a conviction for offensive touching.

C. A store clerk sold a pack of cigarettes to a 17 year old 30 years ago resulting in a conviction for a violation of Title 11 Del.C. §1121.

Such convictions which are either minor and/or remote in time implicate negligible risk of harm if the individual applies to work in a summer camp. Therefore, DFS should consider adopting a more restrained and discriminating standard. At a minimum, DFS could adopt a definition of an “offense against a child” which focuses on crimes implicating abuse, neglect, or exploitation.

Second, in §4.0 Definition of Terms, Council asks that DFS review the citations listed in the definitions of Early Childhood Administrator, Early Childhood Assistant Teacher, Early Childhood Intern and Early Childhood Teacher. We believe the citations are incorrect including references to §§24.92 and 24.11.2.

Third, as applied to camps operated by local governments (e.g. NCC; City of Newark), the categorical ban on employing individuals with a conviction of any offense against a child violates the public policy established by newly enacted State law. House Bill No. 167 disallows public employers from disqualifying an individual from employment based on criminal history unless the exclusion is job related for the position and consistent with business necessity. The employer is admonished to consider the nature of the offense, the time that has passed since the offense, and the nature of the job. Although the new law is not effective until November, it provides useful public policy guidance. The DFS approach of categorically excluding anyone from employment in a camp for minor and stale convictions is inconsistent with the deliberative approach espoused by the newly enacted State law.

Finally, the arbitrary nature of the DFS standard is underscored by considering who is not covered by the DFS categorical ban on camp employment. Individuals with convictions for arson, weapons offenses, assaults with adult victims, homicide of adults, etc. can work or volunteer in camps with no regulatory restriction. Council requests that DFS consider additional review of the individuals who may be impacted by this emergency regulation

Thank you in advance for your time and consideration of our observations. Please feel free to contact me or Wendy Strauss should you have questions or concerns.

Sincerely,

Terri A. Hancharick  
Chairperson

TAH:kpc

CC: The honorable Jennifer Ranji, Secretary, DSCY&F