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October 22, 2018

Department of Education  
Office of the Secretary  
Attn: Regulation Review  
401 Federal Street, Suite 2  
Dover, DE 19901

**RE: 22 DE Reg. 259/14 DE Admin. Code 1517 [DOE Paraeducator Permit Regulation (October 1, 2018)]**

Dear Secretary Bunting:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the amendments proposed by the Professional Standards Board in consultation and cooperation with the Department of Education (DOE) on the Paraeducator Permit process. 14 DE Admin. Code 1517 lists the qualifications necessary to obtain paraeducator permits. It also states the rules for permit renewal, denial, and revocation. Council is unable to support the regulations as written and would like to share the following observations on the proposed amendment.

First, in section 2.0 Definitions, there is a definition of 'Immorality' which states the following, "...conduct which is inconsistent with the rules and principles of morality expected of an educator or paraeducator and may reasonably be found to impair an educator's or paraeducator's effectiveness by reason of his or her unfitness or otherwise." Council would like clarification on where the morality rules are written so paraeducators may be fully aware of the standards they are to uphold.

Second, section 2.0 Definitions also contains the definition of "Planned Professional Development Program, which is defined as "...a structured program within a building, district or charter school that has been specifically identified through a success plan..." Council would like more information and a definition of 'success plan'.

Third, section 3.2.1.2, last sentence states that "The Department shall determine whether the scores, as presented, are acceptable." Stating that the Department determines seems to imply that

the standards are fluid and may be different from one applicant to the next. The DOE may wish to reconsider this.

Fourth, in section 4.1.1, the proposed amendment would prevent a permit from being issued to someone who has “engaged in misconduct in violation of 14 *Del. C.* §1218.” However, 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...” as this may disqualify people with petty criminal backgrounds from obtaining a permit.

14 *Del. C.* §1218 does list 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 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.

Fifth, 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 9.0 Criminal Conviction History 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 or actions could result in permit revocation since there may be serious consequences affecting their careers and financial stability.

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. Denial or loss of a permit may have serious consequences on an individual’s life. Offering hearing rights is good policy when it may affect someone’s livelihood.

Thank you for the opportunity to share our endorsement and observations with you. Please contact me or Wendy Strauss at the GACEC office if you have any questions on our comments.

Sincerely,

*Ann C Fisher*

Ann C. Fisher  
Chairperson

ACF: kpc

CC: Ms. Whitney Sweeney, State Board of Education  
Mary Ann Mieczkowski, Department of Education  
Ms. Jenna Ahner, State Board of Education  
Mr. Chris Kenton, Professional Standards Board  
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