



**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS (GACEC)**  
**GENERAL MEMBERSHIP MEETING**  
*7:00PM, November 15, 2022*  
**ZOOM MEETING**

**MINUTES**

**MEMBERS PRESENT:** Al Cavalier, Nancy Cordrey, Karen Eller, Ann Fisher, Cory Gilden, Tika Hartsock, Molly Merrill, Beth Mineo, Maria Olivere, Trenee Parker, Erika Powell, Jennifer Pulcinella, Stefanie Ramirez on behalf of Laura Waterland, Brenné Shepperson, Meedra Surratte, Erik Warner

**OTHERS PRESENT:** Dale Matusевич/Delaware Department of Education (DDOE) and Patricia Davis/Delaware Department of Justice (DOJ)

**STAFF PRESENT:** Pam Weir/ Executive Director, Kathie Cherry/Office Manager and Lacie Spence/Administrative Coordinator

**MEMBERS ABSENT:** Matt Denn, Bill Doolittle, Jessica Mensack, Kristina Horton, Genesis Johnson, Thomas Keeton, Jill Scannell, Brenné Shepperson and Lindsay Williamson.

Vice Chairperson, Erik Warner, called the general membership meeting to order at 7:03pm and completed the roll call. It was announced that a quorum was present. Al Cavalier **made a motion** to accept the November agenda with Tika Hartsock seconding the motion. The **motion was unanimously approved**. Nancy Cordrey made a **motion to approve** the October meeting minutes with Jennifer Pulcinella **seconding the motion**. The motion **passed unanimously**. Nancy Cordrey made a **motion to approve** the October financial report. Meedra Surratte **seconded the motion**. The **motion passed unanimously**.

**PUBLIC COMMENT**

There was no public comment during the meeting.

**COMMITTEE REPORTS**

**ADULT TRANSITION SERVICES COMMITTEE**

Erik Warner explained that the Adult Transition Services Committee made an update to one of their goals for the year. The Committee crafted emails to invite Dale Matusевич and George

Tilson to present at an upcoming committee meeting. They also reached out to invite Maureen Whelan from Prison Education Services to have her present an update at a future meeting.

### **CHILDREN AND YOUTH COMMITTEE**

Committee vice chairperson Corey Gilden announced that the Children and Youth Committee worked on refining their goals for this year. The Committee will share their goals once they are finalized.

### **INFANT AND EARLY CHILDHOOD COMMITTEE**

Jennifer Pulcinella reported that the Infant and Early Childhood Committee discussed the ongoing transition of the Birth to Three program from DHSS to DOE. There have been discussions on the timing and feasibility of housing the program under DOE. The Birth to Three program is medically based as opposed to educationally based. The Interagency Coordinating Council (ICC) has voted to request that the move be cancelled. The Infant and Early Childhood wanted to give the Council a heads up that the ICC will be composing a letter and the Infant and Early Childhood will likely be requesting a letter in support of canceling this move.

### **POLICY AND LAW COMMITTEE**

Erika Powell reported that the Policy and Law Committee had discussions about what is done with the recommendations that they have made in the past. The Committee is going to start contributing recommending which regulations are reviewed by the Disabilities Law Program. Erika Powell made a **motion to approve** adopting all of the recommendations as written below in the Policy and Law Memo. The **motion was approved** unanimously.

#### **Proposed DOE/Professional Standards Board Regulation on 14 DE Admin. Code 1522 Elementary School Counselor, 26 Delaware Reg. of Regulations 361 (11/01/22).**

The Professional Standards Board (Board), acting with the Delaware Department of Education (DOE), proposes amendments to 14 **DE Admin. Code** 1522 Elementary School Counselor and what is required for a Standard Certificate. The amendment clarified the education, knowledge and skill requirements and adds the option of a new Praxis Subject Matter Assessment in Sections 4.1.2 and 4.2.2.

The proposed amendment includes language that the applicant must disclose criminal conviction history. Failure to do so, the amendment stipulates, is grounds for denial of the application. 5.2

The proposed amendment adds the requirement that clinical experience requirements must be with a licensed and practicing clinician. 4.1.3 and 4.2.3.

This amendment aims to ensure that the quality of Delaware educators remains high, while giving Certificate applicants a fair means to acquire the Certificate. Moreover, the addition of the criminal conviction history requirement creates an additional safeguard for Delaware schools and educational institutions. Council may wish to endorse these changes.

DDOE indicates that the education, knowledge, and skill requirements are designed to improve the quality of the educator workforce, which will help to improve student achievement.

Council may wish to endorse the proposed regulations.

### **Proposed DDOE Regulation on 915 James H. Groves High School, 26 Del. Register of Regulations 358 (November 1, 2022)**

The Delaware Department of Education (DDOE) proposes to amend 14 Del. Admin. C. § 901, which describes the operation of the James H. Groves High School (Groves), an adult education high school. DDOE is proposing to amend this regulation to add a defined term in Section 1.0, replace “State Director” with “Director of Adult and Prison Education Resources”, and to strike the standardized assessment requirement from subsection 2.1.1.1.2. DDOE also proposes additional non-substantive changes to ensure the regulation complies with the *Delaware Administrative Code Drafting and Style Manual*.

First, proposed 14 Del. Admin. C. § 915.1.0 would add an additional definition for “In School Credit Program” which is described in existing 14 Del. Admin. C. § 915.2.2. The proposed language defines the In School Credit Program as an “alternative program operated by the James H. Groves High School that provides an opportunity for students who are age 14 or older and enrolled in their local day school to attain credits needed to fulfill high school graduation requirements.” Council may wish to recommend that DDOE include the word “education” between “alternative” and “program” so as to clearly identify this as an alternative education program and not an alternative program for students facing discipline.

Second, proposed 14 Del. Admin. C. § 915.2.1.1.1.2 removes the standardized assessment requirement as part of the application for enrollment at Groves. Specifically, that section would be changed as follows (indicated by strikethrough): “Qualify as meeting secondary level skills, as determined by the Department, ~~on a standardized assessment.~~” With the change, it is now unclear how DDOE would measure whether a student would qualify as meeting secondary level skills. Furthermore, it could lead to students being measured against different criteria, which can lead to inequitable outcomes. Council may wish to recommend that DDOE not remove this requirement or if it chooses to remove the specific requirement of a standardized test, that it identify other ways of meeting this secondary skill level.

The additional proposed changes, including the change to the title of the Director of Adult and Prison Education Resources, are non-substantive.

However, there are additional concerns with the regulation outside of the proposed amendments that Council may want to address. First, the admission criteria do not contemplate those students in the prison education program specifically. Students in prison who are seeking their high school diploma or GED are automatically enrolled in Groves, yet there is no indication in 915 that there is an exception to the admission criteria for those students (or that students enrolled in prison education are enrolled in Groves). Therefore, Council may wish to recommend that DDOE include language in this regulation that identifies Groves as providing education to incarcerated students and that those students are otherwise exempt from the admission criteria.

Second, current Section 2.3 disallows enrollment of students who have been expelled or are pending expulsion unless he or she receives a waiver from DDOE. Title 14 Del. C. § 4130(d) explicitly exempts Groves from the prohibition on enrolling expelled students. Council may wish to recommend DDOE reconsider its position on whether expelled students can enroll at Groves without a waiver. Councils have previously made this recommendation in 2006 (10 Del. Register of Regulations 988 (December 1, 2006) and 18 Del. Register of Regulations 561 (January 1, 2015).

Third, current Section 4.2 states that “[s]tudents enrolled in James H. Groves High School courses which have an attendance requirement, shall attend a minimum of 85% of the course hours to receive a unit of credit. No provision is made for excused absences.” DLP’s Policy and Law Memo to the Councils in October 2006 had the following thoughts:

*Although not a paragon of clarity, the last sentence could be construed as precluding credit if a student has less than 85% attendance regardless of good cause. This would have a disproportionate impact on students with disabilities, particularly those with chronic health conditions or frequent flare-ups of symptoms. A no-exceptions policy may violate Section 504 and unnecessarily limit the discretion of IEP teams to accommodate students with disabilities. For example, if a student with disabilities achieved A’s in all tests and assignments, but attended only 84% of classes due to a hospitalization, Groves would have no discretion but to deny credit based on the strict regulation. Even on a practical level, Section 3.0 authorizes Groves to grant credit for a lengthy list of non-traditional work with no explicit attendance standards. In contrast, imposing a no-exceptions 85% attendance limit in Section 4.2 appears overly prescriptive.*

Council may wish to recommend DDOE again consider whether having an outright “no excused absences” policy is appropriate in light of federal and state law and regulations regarding the rights of people with disabilities to be free from discrimination.

### **Proposed DOE/Professional Standards Board Regulation on 14 DE Admin. Code 1545 Secondary School Counselor, 26 Delaware Reg. of Regulations 363 (11/01/22).**

The Professional Standards Board (Board), acting with the Delaware Department of Education (DOE), proposes amendments to 14 **DE Admin. Code** 1545 Secondary School Counselor and what is required for a Standard Certificate. The proposed changes parallel the changes for Elementary Counselor. The amendment clarified the education, knowledge and skill requirements and adds the option of a new Praxis Subject Matter Assessment in Sections 4.1.2 and 4.2.2.

The proposed amendment includes language that the applicant must disclose criminal conviction history. Failure to do so, the amendment stipulates, is grounds for denial of the application. 5.2

The proposed amendment adds the requirement that clinical experience requirements must be with a licensed and practicing clinician. 4.1.3 and 4.2.3.

This amendment aims to ensure that the quality of Delaware educators remains high, while giving Certificate applicants a fair means to acquire the Certificate. Moreover, the addition of the

criminal conviction history requirement creates an additional safeguard for Delaware schools and educational institutions. Council may wish to endorse these changes.

DDOE indicates that the education, knowledge, and skill requirements are designed to improve the quality of the educator workforce, which will help to improve student achievement.

Council may wish to endorse the proposed regulations.

**Proposed DOE/Professional Standards Board Regulation on 14 DE Admin. Code 1575 , Teacher of Students with Visual Impairments, 26 Delaware Reg. of Regulations 364 (11/01/22).**

The Professional Standards Board (Board), acting with the Delaware Department of Education (DDOE), proposes amendments to 14 **DE Admin. Code** 1575 Teacher of Students with Visual Impairments (Teacher) and what is required for a Standard Certificate. The proposed regulations also reflect commitment to update standards per HB 382, which was enacted as a result of the sunset committee’s review of the Division for the Visually Impaired (DVI).

The regulation affirms that a teacher must have certification if their primary assignment is teaching students with visual impairments in public schools. The added Definitions and many of the standards are identical to those found in other certification regulations.

The routes to a Standard Certificate in this area are: 1. Exceptional Needs Specialist certification through National Board for Professional Teaching Standards; 2. BA or MA with minimum of 30 hours of coursework in teaching visually impaired students; 3. Completion of alternative routes to licensure or certification ; or completion of Department approved education preparation program for instruction for visually impaired students; BA in any content area with 17 hours of specific courses listed in the regulation.

Criminal history must be disclosed on the application or renewal of license. The Secretary of Education may approve a teacher who does not meet requirements on application of a district or charter school.

There is nothing particularly remarkable about these regulations and they don’t appear to deviate from the requirements of other specialized certificates. Council may wish to object, again, to giving the Secretary the ability to override certification requirements, particularly in an area which requires such a large degree of specialized skill and training.

**Proposed DMMA Regulation on Reasonable Income Compatibility Threshold, 26 Delaware Reg. of Regulations 374 (11/01/22).**

Delaware Health and Social Services (Department)/Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) 14800 regarding the Reasonable Income Compatibility Threshold. The Affordable Care Act required states to compare electronic sources for income information during application and recertification processes. The idea was to reduce documentation requirements that might lead to eligible people not getting services because of difficulties obtaining that documentation.

State agencies have the latitude to set standards for reasonable match of data to what the applicant has attested to. If both the attestation and the data source are at or below the eligibility threshold, the Medicaid agency finds the individual eligible. In these situations, the difference between the attestation and data source does not affect eligibility, because the individual would be eligible using either the electronic data or the attestation. With the approval of the Centers for Medicare & Medicaid Services (CMS), states can establish a reasonable compatibility standard, which applies when an attestation is at or below the eligibility threshold, but data sources show income above the threshold.

DMMA is proposing to increase the variance standard from 10% to 25%. This change will aid in the passive renewal process of Medicaid members during the PHE and the unwinding period of the public health emergency (PHE). This will decrease the need for manual intervention, decrease the risk for inappropriate terminations, and allow staff the ability to focus on the large caseload of renewals that are unable to be passively renewed.

DMMA is concerned that when the PHE finally ends, (and now we know it won't end at least until Spring 2023) that people may struggle to document income and that people may be terminated who are eligible.

Council should consider endorsing this regulation as it will assist individuals in recertification and also ease administrative burden on DMMA as it processes all of the recertifications that must take place when the PHE "unwinds."

### **DMMA Announcement of Intent Proposed Extension and Amendment of Diamond State Health plan Section 1115 Waiver, 26 Delaware Reg. of Regulations 410 (11/01/22).**

DMMA is proposing four new<sup>1</sup> changes in the extension period<sup>2</sup>:

1. Expanding access by providing three-months of retroactive eligibility to all Diamond State Health Plan (DSHP) 1115 Waiver enrollees. DMMA is requesting to terminate the DSHP waiver of retroactive eligibility. Effective no later than January 1, 2024, with the expiration of the current DSHP 1115 waiver, DMMA will extend retroactive eligibility to all eligible DSHP and DSHP-Plus participants three months prior to the date that an application for medical assistance is made. Delaware will terminate this waiver authority to support our goal of expanding access to coverage, including coverage for those who need immediate care while applying for Medicaid Waiver.

Impact: None. Members months associated with retroactive eligibility will be covered outside of the DSHP 1115 Waiver in Medicaid fee for service (FFS).

2. Piloting Medicaid coverage of Delaware's Food Box Initiative for postpartum members. DMMA proposes to add Medicaid coverage of the Medicaid Food Box Initiative for postpartum members under the DSHP 1115 Waiver. The objective of the Food Box Initiative is to address food insecurity and diaper needs as health-related social needs, to improve maternal and infant health and reduce health disparities. The proposed demonstration would allow DMMA to use Medicaid funds to expand our current state-funded pilot to provide home-delivered food and diapers to postpartum members, reaching low-income postpartum members with

disproportionately high rates of food insecurity and inequitable adverse maternal and birth outcomes.

Waiver Impact: Approximately 8,841 members and \$8.29 million over five years.

3. Adding Medicaid coverage of contingency management services for certain members with a stimulant use disorder (SUD) and/or opioid use disorder (OUD). DMMA is proposing to add coverage of contingency management services for Medicaid members who are: (1) age 18 and over with a stimulant use disorder diagnosis and (2) age 18 and over, who are pregnant or up to 12 months postpartum, with an opioid use disorder diagnosis. Contingency management is an evidence-based practice that allows individuals to earn small motivational incentives for meeting treatment goals, such as negative urine drug tests or medication adherence. The objectives of contingency management services are to expand SUD/OUD treatment for eligible Medicaid members with a stimulant use disorder and/or opioid use disorder to help address the rise in fatal drug overdoses throughout Delaware. DMMA also expects this initiative to improve health outcomes and address health disparities.

4. Adding children's state plan dental services under the DSHP 1115 managed care delivery model. Effective January 1, 2024, DMMA is proposing to include children's dental services in the DSHP 1115 Waiver managed care delivery system. The objective of including children's dental services in DSHP managed care is to ensure access to high-quality dental care for children and support a coordinated and integrated delivery system. DMMA expects dental managed care for children will result in a positive (or no negative) impact on child dental access, health outcomes and parent/caretaker satisfaction.

Waiver Impact: Beginning in CY 2024, approximately 114,000 Medicaid-enrolled children will begin receiving their dental services through managed care organizations (MCOs) under the DSHP 1115 Waiver. These expenditures are currently excluded from the DSHP 1115 Waiver. Dental managed care will shift approximately \$327 million in expenditures over five years from fee for services (FFS) to the DSHP 1115 Waiver

The comment period for the proposed amendments is December 13. There will be an additional opportunity when the proposed amendment is filed with CMS. These are all improvements; however, this is also an opportunity to ask for additional changes.

## **Final Regulations**

### **Final DDDS Regulation on Eligibility, 26 Delaware Reg. of Regulations 391 (11/01/22).**

Council made several suggestions to the DDDS Eligibility Criteria and the Division of Developmental Disabilities Services (DDDS) addressed Council comments as follows:

1. Added clarifying language that five-year bar does not apply to non-Medicaid services (2.1.1.2) and refused to include lawfully resided non-qualifying residents, without explanation.
2. DDDS did not remove restriction of eligibility for children under three because they do not want to duplicate services.

3. DDDS added language clarifying the clinical criteria for adaptive functioning in 2.1.3.2.[3]
4. DDDS indicates it will consider a more functional approach to eligibility in the future.

**Final DMMA Regulation on Medicaid Audit Recovery Contractors Program, 26 Delaware Reg. of Regulations 394 (11/01/22).**

DMMA responded to Council’s query about how DMMA will address fraud as follows:

“DMMA appreciates the support. The Surveillance Utilization Review (SUR) Unit under the Program Integrity Section in partnership with the Delaware Medicaid Fraud Control Unit and our Managed Care Organizations Special Investigation Units continues to increase fraud waste abuse awareness. Improvements in information sharing continues to be ongoing to support the need of investigations.”

**Final DMMA Regulation on Ambulatory Surgical Center Rate, 26 Delaware Reg. of Regulations 396 (11/01/22).**

DMMA expressed thanks for Council support.

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[1] July 2022 Pending Amendment DMMA has proposed five changes to the DSHP 1115 Waiver that are pending in an amendment currently under review by CMS for an effective date of January 1, 2023. The changes in this amendment include: 1. Coverage of two models of evidenced-based home visiting for pregnant women and children. 2. Permanent coverage for a second home-delivered meal for members receiving HCBS in DSHP Plus. 3. Coverage of a pediatric respite benefit as an American Rescue Plan Act (ARP) Section 9817 HCBS Spending Plan initiative. 4. Coverage of a self-directed option for parents on behalf of children receiving state plan personal care services. 5. Coverage of Delaware’s Nursing Home Transition Program (formerly Money Follows the Person Demonstration) in the DSHP 1115 waiver.

[2][https://dhss.delaware.gov/dhss/dmma/files/de\\_proposed\\_dsHP\\_1115\\_waiver\\_ext\\_req\\_pub\\_notice\\_nov\\_2022.pdf](https://dhss.delaware.gov/dhss/dmma/files/de_proposed_dsHP_1115_waiver_ext_req_pub_notice_nov_2022.pdf)

[3] 2.1.3.2 The applicant must also have significant limitations in adaptive behavior functioning which includes conceptual, social, and practical skills that are learned and performed by people in their everyday lives, as established by the following: 2.1.3.2.1 [Composite score Score] of approximately 70 or below, [on the composite score] or in at least one domain of a standardized adaptive behavior functioning [assessment; assessment.] 2.1.3.2.2 [When If] there are ratings from two different respondents, scores from different raters should be consistent [with one another] and approximately 70 or below as [a composite score or in at least one domain noted in section 2.1.3.2.1].

**MEMBERSHIP COMMITTEE**

Al Cavalier encouraged Council members who have not already done so to submit their Biographical Sketch. This information will be shared on the GACEC website and social media to highlight our members and the diverse expertise that the Council shares. The Committee is completing some minor editing. Al advised Council that the Committee will be sending the edited version back out for approval from each member. Al also asked members to submit a photo to go along with their Biosketch. The membership committee is working on ways to review applications for people who have applied to become GACEC members.



## **BY-LAWS REVISION AD-HOC COMMITTEE**

Al Cavalier explained the process in which the revised by-laws were developed. Al introduced Patricia Davis, State Solicitor, previously our District Attorney General, who was on the committee to assist in the process. Al explained that all the versions of the by-laws from previous years were compiled and added upon to provide the best version and greatest clarity. The committee was thankful for and reviewed all the written feedback that was received. Once the revised version is sent out, we can vote on them in January.

Al reviewed the substantive changes to the by-laws that were recommended based on the feedback that was received. Maria Olivere suggested adding references and/or links to the code so it is obvious where the language has come from. Discussion ensued regarding member attendance and active participation. Maria Olivere and Erik Warner agreed to assist with shaping the wording of by-laws to include the concept of excused versus unexcused absences to provide more clarity. It was recommended that the remedial steps taken to address member attendance also be added into the bylaws. Trenne Parker suggested having a very clear process in place on how requests for excused absence are made and agreed to help with the wording for that.

## **DDOE REPORT**

Dale Matusевич, Director of the Exceptional Children's Resource Workgroup (ECR) of DDOE, explained that he and Pam have been meeting. He shared with Pam a template that lists each Indicator that goes into the Annual Performance Report and lists prioritized activities toward each of those Indicators. Dale explained that you will see a lot of previous stakeholder feedback that was included in this. Dale explained that he hopes this will be a good start to the conversations that we will continue to have in improving our collaborative efforts. Dale reported that since the Retreat in October, they have had county meetings with all the special education directors. Dale hopes to change the perspective to focus on the results rather than compliance. There have been many discussions on implementation of Multi-Tiered Systems of Support (MTSS). Many schools have been honest about their struggle to implement MTSS. DDOE has been looking into reframing or revisiting MTSS and how to approach local education agencies (LEAs) around the implementation. Dale explained that DDOE is going to be more intentional about reaching out to have more special education representation at professional development opportunities regarding the general curriculum. Dale wants to take a closer look at what is available for DDOE to have more leverage in working with districts. The state education agency (SEA) is graded on their National Assessment of Educational Progress (NAEP) scores. This is completed every other year and only uses a sample of a small group of LEAs that participate. Dale feels that this is not a full representation of what is happening throughout the state and that we should focus more attention to the LEA piece. DDOE is considering creating a data retreat to be done over the summer available to any LEA that wants to participate. The LEA would bring a team together including special and regular education educators, administrators and district office staff to review all the data, not just special education data. This can be an enlightening experience for administrators. Dale believes we need to stop looking at information in isolation. Dale explained that leadership should consider what teachers in the classroom would like to see for Professional Development that is of the utmost importance to them. Stefanie Ramirez asked if the Prison Education System is in the discussions about getting LEAs more engaged, even

though Prison Education is not considered an LEA. Dale answered that they would have to determine what metrics to use because Prison Education is not involved in state testing when it comes to the determinations. Prison Education is monitored for the compliance aspects. Dale noted that there are many conversations that are had with the Prison Education system and the Department of Corrections to ensure incarcerated individuals are receiving the supports and services they need. Pam asked Council what they would like to see in upcoming meetings so she and Dale can prepare what information needs to be shared ahead of time. Tika hoped that presentation topics could align with other important timelines in education. Pam and Dale have discussed how they can provide some education, discuss hot topics, provide relevant data and align that with Council goals at each meeting. Maria would like to have the loop closed on issues that have been brought forward. Maria suggested having time to chat with Dale about smaller issues that come up that Dale may be able to assist with finding solutions. Cory suggested that if each committee could share their goals and any asks of DDOE and ask questions about where the state is in relation to certain goals. Dale wanted to address the question Council asked about the two new buildings for non-inclusive special programs. Dale clarified that these programs were not new, but the new buildings were built for existing programs. Dale is a huge proponent of inclusive practices. Not only do inclusive settings educate individuals with disabilities, but it also educates people without disabilities about disabilities.

### **CHAIR REPORT**

Vice Chairperson, Erik Warner, announced the absent members for the evening. Erik asked for volunteers for the nominating committee for the upcoming officer elections. Erik asked for individuals who are interested to reach out to staff.

### **DIRECTOR'S REPORT**

There was no Director's Report for this month.

### **OUTSIDE COMMITTEE/ADHOC COMMITTEE REPORTS**

There were no outside committee reports for this month.

Erik reminded members to contact GACEC staff if they would like to see any of the letters or responses written by the GACEC. Trenne Parker **made a motion** to adjourn the meeting at 9:04pm and Jennifer Pulcinella **seconded the motion**. The **motion passed** unanimously.