



STATE OF DELAWARE  
**STATE COUNCIL FOR PERSONS WITH DISABILITIES**  
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**MEMORANDUM**

DATE: June 25, 2014

TO: Ms. Elizabeth Timm, DFS  
Office of Child Care Licensing

FROM: Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

RE: 17 DE Reg. 1124 [DFS Emergency Camp Personnel Criminal Background Check Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Services for Children, Youth and Their Families/Division of Family Services (DFS)/Office of Child Care Licensing's emergency regulation which was effective May 19, 2014 and published as 17 DE Reg. 1124 in the June 1, 2014 issue of the Register of Regulations.

As background, the Division notes that the Governor issued Executive Order No. 42 in January, 2014 which created a task force to examine Delaware's criminal background and child protection registry check requirements related to individuals working with children. The task force report is not expected to be issued until the end of 2014. In the meantime, there is no statutory or regulatory requirement that persons employed or volunteering in summer camps undergo background checks. The regulation attempts to "close the loophole" by requiring checks of criminal convictions and the Child Protection Registry.

The concept underlying the regulation is laudable. Checks of prospective employees should be undertaken. However, some provisions in the regulation are "overbroad" and SCPD has the following observations.

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.

SCPD 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. There is no time limit so a conviction occurring 50 years ago bars 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, 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. H.B. 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 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 simply 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.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or recommendations on the proposed regulation.

cc: Ms. Vicky Kelly  
Ms. Jennifer Ranji, Secretary - DSCYF  
Brian Hartman, Esq.  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council