

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 8 Delaware Code, Section 125 and 14 Delaware Code, Sections 121(a)(16), 122(b)(8), & 194 (8 Del.C. §125 and 14 Del.C. §§ 121(a)(16), 122(b)(8), & 194)  
14 DE Admin. Code 292

### PROPOSED

### PUBLIC NOTICE

#### Educational Impact Analysis Pursuant to 14 Del.C. §122(d)

#### 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education

#### A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 8 Del.C. §125 and 14 Del.C. §§121(a)(16), 122(b)(8), and 194, the Delaware Department of Education ("Department"), through the Delaware Higher Education Office, developed amendments to 14 DE Admin. Code 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education. The regulation concerns the requirements for the issuance, renewal, and revocation of a Certificate of Approval to operate a Postsecondary Institution in Delaware in addition to the requirements for obtaining the Department's approval to confer degrees. The proposed amendments include revising the title of the regulation, clarifying Section 1.0, adding and striking defined terms in Section 2.0; specifying the requirements for a Certificate of Approval in Section 3.0; specifying the procedure for denying an application for the Department's approval to confer degrees in subsection 5.6; adding the application requirements to obtain a Certificate of Approval in Section 6.0; adding Section 7.0, which concerns denying applications for a Certificate of Approval; adding Section 8.0, which concerns revoking a Certificate of Approval; clarifying Section 98.0, which concerns termination of the Department's approval to confer degrees; and adding Section 12.0, which concerns consumer fair practices and complaints. The proposed amendments are consistent with HB 481 of the 151st General Assembly, which was signed into law on August 4, 2022.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before January 3, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

#### C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation concerns postsecondary institutions and is not designed to help improve student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The criteria for issuance and renewal of a Certificate of Approval in Section 4.0 are designed to help ensure that students receive an equitable education at postsecondary institutions that operate under a Certificate of Approval issued by the Department.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The criteria for issuance and renewal of a Certificate of Approval in Section 4.0 are designed to help ensure that students' health and safety are adequately protected at postsecondary institutions that operate under a Certificate of Approval issued by the Department.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The criteria for issuance and renewal of a Certificate of Approval in Section 4.0 are designed to help ensure that students' legal rights are respected at postsecondary institutions that operate under a Certificate of Approval issued by the Department.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation concerns postsecondary institutions and does not change authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation concerns postsecondary institutions does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department, through the Delaware Higher Education Office, implements the regulations promulgated and adopted relating to postsecondary institutions.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies? The amended regulation is consistent with, and not an impediment to, the implementation of other state educational policies, and in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? There is not a less burdensome method for addressing the purpose of this amended regulation.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state of complying with this amended regulation. The regulation does not apply to local school boards.

## **292 Post-Secondary Institutions and Degree-Granting Institutions of Higher Education Postsecondary Institutions**

### **1.0 Applicability**

1.1 Pursuant to ~~8 Del.C. §125 and 14 Del.C. §§121(a)(16) and 122(b)(8)~~, no corporation or Institution other than those authorized in Title 14 of the Delaware Code shall without first having received approval from the Department:

1.1.1 Incorporate in Delaware with the power to confer Degrees; or

1.1.2 Offer courses, Programs of Courses, or Degrees in Delaware.

Pursuant to 14 Del.C. §§121(a)(16), 122(b)(8), and 194, this regulation applies to Postsecondary Institutions and sets forth the requirements for the issuance, renewal, and revocation of a Certificate of Approval to operate in Delaware. In addition, pursuant to 8 Del.C. §125, this regulation sets forth the requirements for obtaining the Department's approval to confer degrees.

1.2 This regulation shall not apply to postsecondary institutions in Delaware that are established by law (Delaware State University, Delaware Technical and Community College, and University of Delaware).

4.2 1.3 This regulation shall not apply to Private Business and Trade Schools private business and trade schools, as defined in 14 Del.C. §8501(2), to the extent they do not offer Degrees and are governed by 14 Del.C. Ch. 85, and or to the Institutions institutions specified in 14 Del.C. Parts II, III, and VI.

4.3 1.4 A separate approval process is required for educator preparation programs. Institutions that seek to offer or are offering educator preparation programs shall follow the requirements set forth in 14 DE Admin. Code 290 Approval of Educator Preparation Programs.

### **2.0 Definitions**

The words and terms, when used in this regulation, shall have the following meaning ~~unless the context clearly indicates otherwise~~:

**"Accrediting Agency"** means a nationally recognized, ~~regional~~, or specialized accrediting agency ~~or association that appears on the list of that is recognized accrediting agencies published by the United States Secretary of Education or any other Accrediting Agency the Delaware Secretary of Education deems, within his or her discretion, to be reliable or be equivalent to those on the published list as a reliable authority concerning the quality of education or training offered by postsecondary institutions or programs the agency accredits.~~

**"Agent"** means ~~any person, representing an Institution or employed by an Institution who contacts persons within Delaware in any manner for the purpose of soliciting enrollment in any course, Program, or Degree.~~

**"Application Form"** means the appropriate form created by the Department to request approval or renewal as an Institution of Higher Education.

**"Certificate of Approval"** means the certificate issued by the Department that authorizes a Postsecondary Institution to operate.

**"Degree"** means, although not limited to, any academic credential or designation not less than, but including associate, bachelor, master, doctor, or fellow, whether earned or honorary, which signifies, purports, or is generally taken to signify partial or satisfactory completion of the requirements of an academic, occupational, business, or other Program of study beyond the secondary school level.

**"Degree Granting Authority"** means ~~authorization~~ approval from the Department to confer Degrees.

**"Department"** means the Delaware Department of Education.

**"Department Approval"** means ~~the process by which a specific Institution is recognized by the Department as meeting state criteria for approval for such Institution.~~

**"Full Approval"** means the third level of Degree Granting Authority status granted by the Department.

~~**"Institution of Higher Education"** or **"Institution"** means a college, university or other Post Secondary Institution that offers courses, Programs of Courses, or Degrees. For the purpose of this regulation, Post Secondary Institutions and Institutions of Higher Education shall have the same meaning.~~

~~**"Operating License"** means authorization of Institutions not incorporated in Delaware to offer courses, Programs of Courses, or Degrees at a location in Delaware or to residents of Delaware.~~

**"Postsecondary Institution"** means a person, as defined in 1 **Del.C.** §302, that offers postsecondary courses, postsecondary programs of courses, or postsecondary programs that lead to a certificate or degree in the State.

~~**"Private Business and Trade Schools"** means the same as in 14 **Del.C.** §8501(3).~~

**"Program"** or **"Program of Courses"** means the specific sequence of courses and experiences required by an Institution. Program includes an organized unit of subject matter in which instruction is offered within a given time and for which credit is given toward completion of training toward a predetermined occupational or academic credential.

**"Provisional Approval"** means the second level of Degree Granting Authority status granted by the Department.

**"Recognized Applicant"** means the initial level of Degree Granting Authority status granted by the Department.

**"Secretary"** means the Secretary of the Delaware Department of Education or designee.

~~**"Seeking Accreditation"** means that an Institution has achieved candidacy status or the equivalent standing from a regional Accrediting Agency or a nationally recognized Accrediting Agency.~~

**"Surety Bond"** means a written agreement between an Institution and a bond company that is secured by the Institution in an amount sufficient for the protection of the tuition and fees paid by enrolled students.

### **3.0 Classifications of Institutions Issuance and Renewal of a Certificate of Approval**

#### ~~3.1 Degree Granting Authority~~

~~3.1.1 The Department provides three (3) classification statuses (Recognized Applicant, Provisional Approval, and Full Approval) for Institutions seeking Degree Granting Authority.~~

~~3.1.2 Institutions that seek Degree Granting Authority shall complete the application process in Section 5.0.~~

~~3.2 Operating License. Institutions that are not incorporated in Delaware, hold Degree Granting Authority from another state or jurisdiction within the United States and its territories, maintain accreditation from an Accrediting Agency, and wish to offer courses, Programs of Courses, or Degrees in Delaware shall complete the application process defined in Section 6.0.~~

3.1 Pursuant to 14 **Del.C.** §185(a), no person may operate a Postsecondary Institution without having obtained a Certificate of Approval issued by the Department.

3.2 In order for the Department to issue or renew a Certificate of Approval, an applicant must:

3.2.1 Have the power to confer degrees from another state or territory or obtain Degree Granting Authority from the Department as provided in Section 5.0;

3.2.2 Meet all of the statutory requirements in 14 **Del.C.** §§185-194;

3.2.3 Meet all of the requirements in this regulation; and

3.2.4 Pay the application fee specified in subsection 6.3.

3.3 Notwithstanding subsection 3.2, the Department may issue a Certificate of Approval to an applicant who has the power to confer degrees from another state or territory and meets the requirements of a reciprocity agreement to which the Department is a party.

3.4 A Certificate of Approval is issued for a 5-year period.

3.5 Once a Certificate of Approval is issued, the Postsecondary Institution shall:

3.5.1 Display the certificate on its website and make the certificate available to students upon request;

3.5.2 Be restricted to the courses, programs of courses, and programs that lead to a certificate or degree that are specified in its application for the certificate;

3.5.3 Submit a supplemental application to the Department for approval of any additional courses, programs of courses, or programs that lead to a certificate or degree it desires to offer during the effective period of the Certificate of Approval; and

3.5.4 Submit an application for renewal prior to the Certificate of Approval's expiration date. If the application for renewal is approved, the Certificate of Approval will be issued for another 5-year period.

3.6 A Certificate of Approval is not transferrable.

#### 4.0 **Criteria for Issuance and Renewal of a Certificate of Approval**

- 4.1 ~~All~~ Pursuant to 14 **Del.C. §187(e)**, all Postsecondary Institutions shall meet the following criteria:
- 4.1.1 The Postsecondary Institution shall have a clearly defined mission with goals and objectives that are consistent with the purposes of higher education and related to the courses, Programs of Courses, or Degrees the Institution proposes to offer or has received Department approval to offer in Delaware.
  - 4.1.2 The Postsecondary Institution shall be financially sound and have adequate financial resources to show that the Institution possesses sufficient liquid assets to provide timely refunds, pay expenses, and maintain continuity of operation.
    - 4.1.2.1 The adequacy of ~~an~~ a Postsecondary Institution's financial resources shall be judged in relation to the Institution's mission, the scope of its Programs, and the number of anticipated or current students.
    - 4.1.2.2 For Postsecondary Institutions applying for Recognized Applicant status, evidence of sufficient liquid assets may be in cash or other assets that may be readily converted into cash to buy goods and services or to satisfy obligations in an amount equal to start-up costs, expenses and projected tuition income for the first term of enrollment.
  - 4.1.3 The Postsecondary Institution shall maintain adequate financial records and exercise proper management, financial controls, and business practices.
    - 4.1.3.1 The Institution shall submit financial statements that are prepared by an independent, certified public accountant that contain the Institution's:
      - 4.1.3.1.1 Sources of income;
      - 4.1.3.1.2 Categories of expenditure;
      - 4.1.3.1.3 Profit or nonprofit status;
      - 4.1.3.1.4 Nature and amount of indebtedness (if any), including how indebtedness was incurred;
      - 4.1.3.1.5 Amortization schedule; and
      - 4.1.3.1.6 Five-year financial projection.
    - 4.1.3.2 The Postsecondary Institution shall provide a copy of any audited financial statement that it was required to submit to the United States Department of Education.
  - 4.1.4 The Postsecondary Institution shall present evidence demonstrating the educational need to establish operations, offer Degrees, Programs or Programs of Courses in question in the State.
    - 4.1.4.1 The Postsecondary Institution shall demonstrate that the proposed Degrees, Programs, or Programs of Courses for which the Institution is making application meet a critical and compelling need in the State.
    - 4.1.4.2 The Postsecondary Institution shall present data projecting market demand and the availability of openings in the job market to be served by the new Degrees, Programs, or Programs of Courses for which the Postsecondary Institution is ~~making~~ completing an application.
  - 4.1.5 The Postsecondary Institution shall adopt standards for accounting and financial reporting that adhere to the widely accepted standards published by the National Association of College and University Business Officers (NACUBO). The standards shall account for federal and state monies, as well as other sources of income and expenditures.
  - 4.1.6 The Postsecondary Institution's business and financial management shall be under the direction of a qualified and bonded business officer charged with the preparation and supervision of the budget in accordance with sound financial and educational practices.
  - 4.1.7 The Postsecondary Institution shall have insurance in an amount sufficient to maintain the Institution's solvency in case of loss by fire or other causes, to protect the Institution in liability matters, and to assure the Postsecondary Institution's continuity of operation.
  - 4.1.8 In order to maintain approval the Postsecondary Institution shall maintain a Surety Bond or show proof of designated funds and assets sufficient to cover the tuition and fees paid by enrolled students in the event of sudden school closure. ~~The Institution~~ Notwithstanding the foregoing requirement, if the Postsecondary Institution seeks to obtain Degree Granting Authority from the Department, the Postsecondary Institution shall maintain a Surety Bond to cover the tuition and fees paid by enrolled students in the event of sudden school closure in order for the Postsecondary Institution to be granted and maintain Recognized Applicant status and Provisional Approval status. Once the Postsecondary Institution obtains Full Approval status, the Postsecondary Institution shall maintain a Surety Bond or show proof of designated funds and assets sufficient to cover the tuition and fees paid by enrolled students in the event of sudden school closure. All

Postsecondary Institutions shall secure the transmission of all student materials as per ~~Section 9.0 14~~ **Del.C. §192**.

- 4.1.9 The Postsecondary Institution shall ~~be Seeking Accreditation~~ have achieved candidacy status or the equivalent standing from an Accrediting Agency or a nationally recognized Accrediting Agency or shall be accredited as follows:
  - 4.1.9.1 ~~An A~~ A Postsecondary Institution shall gain applicant or candidate for accreditation status and, ultimately, accreditation from an Accrediting Agency.
  - 4.1.9.2 The Accrediting Agency must be appropriate to the Institution's mission, goals, and objectives.
  - 4.1.9.3 The Postsecondary Institution must meet the Accrediting Agency's requirements within a reasonable period of time as determined by the Department.
- 4.1.10 The Postsecondary Institution's organizational pattern shall be related to its stated goals and the Postsecondary Institution shall operate under an administrative structure that effectively accomplishes the Postsecondary Institution's stated objectives.
- 4.1.11 The Postsecondary Institution shall provide appropriate student services.
- 4.1.12 The Postsecondary Institution shall admit, retain, and graduate only those students who meet quantitatively and qualitatively creditable standards of achievement appropriate to the Postsecondary Institution.
- 4.1.13 The Postsecondary Institution shall maintain a credentialed faculty, a Program of instruction, facilities, and resources that are regularly evaluated and are adequate to the attainment of educational quality and satisfactory realization of the Postsecondary Institution's mission and goals.
- 4.1.14 The Postsecondary Institution shall ensure that students have access to sufficient learning resources, including a library with a collection, staff, services, equipment, and facilities that are appropriate to the Postsecondary Institution's mission, goals, and objectives.
- 4.1.15 The Postsecondary Institution shall publish a catalog that gives an accurate description of the Institution's policies, Degree requirements, and Program and course descriptions and is provided to each student prior to enrollment.
- 4.1.16 The Postsecondary Institution shall comply with all federal, state, and local laws and regulations.
- 4.1.17 If ~~an a~~ a Postsecondary Institution intends to offer Degrees, programs or program of courses that lead to professional licensure, the Postsecondary Institution shall demonstrate compliance with the appropriate state licensing agency (such as but not limited to the Division of Professional Regulation or the Department).
- 4.1.18 If ~~an a~~ a Postsecondary Institution provides or intends to provide online instruction, the Institution shall demonstrate compliance with the Interregional Guidelines for the Evaluation of Distance Education published by the Council of Regional Accrediting Commissions (C-RAC) or 21st Century Distance Education Guidelines published by the National Center for Higher Education Management Systems (NCHEMS).

## **5.0 Application and Renewal Process for Degree Granting Authority from the Department**

- 5.1 ~~A corporation seeking approval to offer Degrees, Programs or Programs of Courses within Delaware shall comply with the Application Process as defined in this regulation.~~
- 5.2 Application Procedure for All Approval Levels
  - 5.2.1 ~~An Institution shall begin the approval process by completing and submitting an Application Form and all required documentation either electronically or in hard copy to the Department.~~
  - 5.2.2 ~~The Application Form and supporting documentation shall be reviewed by the Department or an evaluation team selected by the Department.~~
  - 5.2.3 ~~As part of the review, the Department may require a meeting with the Board of Trustees or the administrative staff, or both, of the Institution.~~
  - 5.2.4 5.1 Postsecondary Institutions incorporating or already incorporated in Delaware may be granted ~~one (1) 1 of three (3) 3~~ 3 levels of approval of Degree Granting Authority: Recognized Applicant; Provisional Approval; or Full Approval; or the Department may deny the application as provided in subsection 5.6.
- 5.2 A Postsecondary Institution that is located outside of the United States and its territories may be considered for Degree Granting Authority only upon accreditation from an Accrediting Agency.
- 5.3 Applying for and Renewal of Recognized Applicant Status
  - 5.3.1 Recognized Applicant Status. An Institution with Recognized Applicant status may offer the Programs and Degrees specified in the letter referenced in subsection 5.3.2 and may incorporate in Delaware but shall not have the power to confer Degrees under **8 Del.C. §125**.

### 5.3.2 Application for Recognized Applicant Status

5.3.2.1 ~~Institutions of Higher Education~~ Postsecondary Institutions shall submit an Application Form containing a description of its purposes and objectives, administrative organization, financial administration, student support services, admission policies and procedures, faculty, ~~Programs~~ programs and courses, graduation requirements, facilities, library, education resources, instructional technology, and assessment of student learning. Institutions of Higher Education must also submit copies of its most recently published documents including course catalogs and any additional information requested on the Application Form or by the Department. Postsecondary Institutions that hold accreditation from an Accrediting Agency can satisfy this requirement through a copy of the most recent accreditation approval and an authorized letter from the Accrediting Agency confirming that these criteria were evaluated and approved during the most recent review.

5.3.2.2 If the Department determines that, based on all the documentation provided, the Postsecondary Institution appears to meet, or shows promise of meeting, a significant portion of the criteria in Section 4.0 of this regulation, the Postsecondary Institution may be granted Recognized Applicant status. The Department will issue a letter indicating that the Postsecondary Institution has been granted a status of Recognized Applicant.

### 5.3.3 Renewal of Recognized Applicant Status

5.3.3.1 Recognized Applicant status may be issued for ~~one (1)~~ 1 year.

5.3.3.2 Renewal of Recognized Applicant status is dependent upon the Postsecondary Institution demonstrating it continues to meet the requirements of this regulation and intends to seek accreditation from an Accrediting Agency or, if applicable, continues to maintain accreditation from an Accrediting Agency.

5.3.3.3 If the Department determines that the Postsecondary Institution continues to meet the requirements of this regulation and is making satisfactory progress towards the next level of recognition, Recognized Applicant status may be renewed.

5.3.4 Required Reporting to Maintain Recognized Applicant Status. Once ~~an~~ a Postsecondary Institution has been granted Recognized Applicant status, the Postsecondary Institution shall keep the Department informed of any changes since its most recent approval, including but not limited to the names and addresses of those responsible for directing the Programs from the parent campus, names and credentials of instructors, and the locations of all sites in Delaware where instruction is offered.

### 5.3.5 Required Student Notification to Maintain Recognized Applicant Status

5.3.5.1 The Postsecondary Institution shall notify students individually, in writing, upon application and admission, that it does not have Degree Granting Authority.

5.3.5.2 The Postsecondary Institution shall notify students individually, in writing, near the end of the first school year of their approval period that it does not have Degree Granting Authority. The Postsecondary Institution shall provide such notification annually thereafter until Provisional Approval status is achieved.

5.3.5.3 The Postsecondary Institution shall notify students individually, in writing, if the Postsecondary Institution's Recognized Applicant status is terminated.

## 5.4 Applying for and Renewal of Provisional Approval Status

### 5.4.1 Provisional Approval Status

5.4.1.1 ~~An~~ A Postsecondary Institution with Provisional Approval status may offer the Programs and Degrees specified in the letter under subsection 5.4.2.1 of this regulation and may confer Degrees under 8 **Del.C.** §125.

5.4.1.2 In order to have the power to confer Degrees:

5.4.1.2.1 ~~An~~ A Postsecondary Institution that is not already incorporated in Delaware shall file a certificate of incorporation with the Delaware Secretary of State that provides the Postsecondary Institution with the power to confer Degrees and that has the Department's approval endorsed thereon as required by 8 **Del.C.** §125.

5.4.1.2.2 ~~An~~ A Postsecondary Institution that is already incorporated in Delaware shall file an amendment to its certificate of incorporation with the Delaware Secretary of State that provides the Postsecondary Institution with the power to confer Degrees and that has the Department's approval endorsed thereon as required by 8 **Del.C.** §125.

### 5.4.2 Application for Provisional Approval Status

5.4.2.1 ~~An~~ A Postsecondary Institution may request to advance to the next level of approval at the end of the first year of Recognized Applicant status and at the time that it submits a progress report,

provided that it includes a notarized letter that the Postsecondary Institution has submitted or intends to submit the application for accreditation from an Accrediting Agency within 90 days of receiving Provisional Approval status.

5.4.2.2 The progress report shall include an update on progress toward meeting required standards and progress towards accreditation. It shall also include progress on approval for state licensing for all applicable programs.

5.4.2.3 If the Department determines that, based on all the information provided, the Postsecondary Institution appears to meet a significant portion of the criteria as stated in this regulation and continues to successfully address the Accrediting Agency's requirements towards Full Accreditation, the Postsecondary Institution may be granted Provisional Approval status. The Department will issue a letter indicating that the Postsecondary Institution has been granted a status of Provisional Approval.

5.4.2.4 Those Postsecondary Institutions required to remain on Recognized Applicant status shall be informed of the changes and improvements necessary to be eligible for Provisional Approval status. There is no guarantee that ~~an~~ a Postsecondary Institution with Recognized Applicant status will be granted either Provisional or Full Approval status.

#### 5.4.3 Renewal of Provisional Approval Status

5.4.3.1 Initial awarding of Provisional Approval status is valid for ~~one (1)~~ 1 year.

5.4.3.2 After the first year of Provisional Approval status, the Postsecondary Institution shall apply for renewal.

5.4.3.3 To apply for renewal, the Postsecondary Institution shall submit an Application Form, proof of application for accreditation status or new and updated accreditations, and a current course catalog. The Postsecondary Institution shall submit a progress report that shall include an update on progress toward meeting required standards and progress towards accreditation. It shall also include progress on approval for state licensing for all applicable programs. The progress report must be submitted ~~six (6)~~ 6 months prior to the expiration of its Provisional Approval status. The Application Form to request renewal must accompany the progress report. If the Department determines that the Postsecondary Institution continues to meet the requirements of this regulation and is making satisfactory progress towards the next level of recognition, Provisional Approval status may be renewed for a ~~three (3)-year~~ 3-year period.

5.4.3.3.1 The Department or the evaluation committee may make on-site visits to the Postsecondary Institution in order to verify the contents of the report and evaluate progress to date.

5.4.3.3.2 The Department or evaluation committee shall make recommendations for any changes necessary based on the progress report submitted that are required for consideration for Full Approval.

5.4.3.4 Provisional Approval and its requirements must be met by the Postsecondary Institution until such time as the Postsecondary Institution receives accreditation from an Accrediting Agency but for no more than ~~six (6)~~ 6 years from the date of the first renewal.

5.4.3.4.1 Upon receipt of accreditation, ~~an~~ a Postsecondary Institution may apply to advance to the next status level of Full Approval.

5.4.3.4.2 ~~An~~ A Postsecondary Institution that fails to receive accreditation within ~~six (6)~~ 6 years of the date of the first renewal shall have its Provisional Approval status terminated. The Department shall notify the Delaware Division of Corporations, in writing, that the Postsecondary Institution is no longer approved by the Department to confer Degrees. The Postsecondary Institution shall notify students in writing of the termination of Degree Granting Authority.

5.4.3.5 The Postsecondary Institution shall keep the Department informed of any changes since its most recent approval, including changes in its accreditation or state licensing approvals, the names and addresses of those responsible for directing Programs from the parent campus, and the locations of all sites in Delaware where instruction is offered.

#### 5.5 Applying for and Renewal of Full Approval

##### 5.5.1 Full Approval Status

5.5.1.1 ~~An~~ A Postsecondary Institution receiving Provisional or Full Approval status may incorporate with the power to confer Degrees under 8 **Del.C.** §125. If the Postsecondary Institution has previously incorporated in Delaware without the power to confer Degrees, the Postsecondary Institution shall file an amendment to its certificate of incorporation with the Department's approval endorsed thereon in accordance with 8 **Del.C.** §125 in order to have the power to confer Degrees.

5.5.1.2 Full Approval status may be valid for up to ~~five (5)~~ 5 years unless terminated in accordance with this regulation. If the Department determines that the Postsecondary Institution continues to meet the requirements of this regulation, Full Approval status may be extended every ~~five (5)~~ 5 years.

#### 5.5.2 Application for Full Approval Status

5.5.2.1 The Postsecondary Institution may request to advance to Full Approval status once accreditation has been awarded from an Accrediting Agency. At that time, the Postsecondary Institution shall also submit an Application Form, with required documents, indicating a request to advance to Full Approval status.

5.5.2.2 If the Department determines that, based on all the information provided, the Postsecondary Institution meets all standards stated in this regulation and accreditation status has been granted by an Accrediting Agency, the Postsecondary Institution may be granted Full Approval status. The Department will issue a memorandum indicating that the Postsecondary Institution has been granted this level of approval.

5.5.2.3 Those Postsecondary Institutions required to remain on Provisional Approval status shall be informed of the changes and improvements necessary to be eligible for Full Approval status. There is no guarantee that an Postsecondary Institution with Provisional Approval status will be given Full Approval.

#### 5.5.3 Renewal of Full Approval Status

5.5.3.1 The Postsecondary Institution shall submit an Application Form with accompanying documents to request renewal no later than ~~six (6)~~ 6 months prior to the expiration of its current Full Approval status.

5.5.3.2 The Department or the evaluation committee may make an onsite visit to the Postsecondary Institution in order to verify the contents of the report and evaluate progress to date.

5.5.3.3 Postsecondary Institutions shall keep the Department informed of any changes since its most recent approval, including changes in its accreditation, state licensing approvals, the names and addresses of those responsible for directing Programs from the parent campus, and the locations of all sites in Delaware where instruction is offered.

### 5.6 Approval of New Programs and Degrees

~~5.6.1 An Institution shall request approval for new Programs and Degrees after initial approval has been granted and before renewal is required.~~

~~5.6.2 An Institution shall submit a request for approval of new Programs and Degrees on the appropriate Department form with supporting information and documentation as requested by the Department.~~

~~5.6.3 The Department shall review the new Programs and Degrees based on the information submitted by the Institution.~~

~~5.6.4 The Department shall determine if the new Programs and Degrees meet the requirements set forth in Section 4.0 of this regulation.~~

~~5.6.5 The new Programs and Degrees may be granted provisional approval under this section for a period of up to three (3) years or to the date of the next Institution renewal, whichever comes first.~~

~~5.6.6 The Institution shall notify students individually, in writing, if approval for any new Programs or Degrees is revoked at any time for failure to meet the requirements as listed in Section 4.0.~~

5.6 When the Department proposes to deny a Postsecondary Institution's application for approval status, the Department shall first give written notice to the Postsecondary Institution of the reasons for denial and the opportunity for a hearing before the Secretary. The Postsecondary Institution shall be afforded at least 20 calendar days from the date the notice is mailed to request a hearing. If no written request for a hearing is received by the Secretary, the Postsecondary Institution's application is deemed denied as set forth in the notice and the Department shall notify the Postsecondary Institution the application is denied.

5.6.1 Any hearing before the Secretary shall be held within 90 calendar days of the date the Secretary receives a request for a hearing.

5.6.2 Notice of the hearing shall be given at least 20 calendar days before it is held.

5.6.3 The hearing shall be conducted by the Secretary or the Secretary's designee who shall prepare a proposed order for the Secretary's consideration.

5.6.4 The burden of proof shall be on the applicant to show by a preponderance of evidence that the applicant should not be denied approval status because the applicant meets the requirements for Recognized Applicant, Provisional, or Full Approval status.

## 6.0 Operating License



- 6.1 The requirements of this regulation shall be the minimum criteria necessary to obtain Department approval.
- 6.2 Application for an Operating License
- 6.2.1 An Institution that meets the requirements of subsection 3.2.1 shall apply for an Operating License.
- 6.2.2 If the Department determines that, based on all the information provided, the Institution appears to meet a significant portion of the criteria as stated in this regulation, the Institution shall be granted an Operating License. The Department will issue a memorandum indicating that the Institution has been granted an Operating License.
- 6.2.3 An Operating License is valid for up to five (5) years unless terminated in accordance with this regulation.
- 6.3 Renewal of an Operating License
- 6.3.1 The Institution shall submit an Application Form with accompanying documents to request renewal no later than six (6) months prior to the expiration of its Operating License.
- 6.3.2 The Department or the evaluation committee may make an onsite visit to the Institution in order to verify the contents of the report and evaluate progress to date.
- 6.3.3 The Institution shall submit the appropriate Agent identification and license identifying the Agent or Agents, and their respective corporate affiliations, who will represent the Institution when contacting individuals within the State of Delaware for the purpose of soliciting enrollment in the Institution.
- 6.3.3.1 Each individual identified in the Institution's application as an Agent may be granted a license to represent the Institution.
- 6.3.3.2 The Institution shall submit an updated Agent identification and license request as part of its renewal request.
- 6.3.4 All Institutions shall keep the Department informed of any changes since its most recent approval, including changes in its accreditation, the names and addresses of those responsible for directing the Programs from the parent campus, and the locations of all sites in Delaware where instruction is offered.

## **6.0 Application Requirements for a Certificate of Approval**

- 6.1 In accordance with 14 **Del.C.** §187, a Postsecondary Institution must submit a verified application for issuance or renewal of a Certificate of Approval that is signed under oath to the Department. In order for the application to be complete, the following information is required:
- 6.1.1 The name of the Postsecondary Institution and ownership and controlling officers' information;
- 6.1.2 The specific courses, programs of courses, or certificates or degrees that will be offered.
- 6.1.3 The facility or facilities where instruction will be given, including all websites, applications, or technology through which courses will be offered.
- 6.1.4 The educational and teaching qualifications of instructors and administrators.
- 6.1.5 The defined mission with goals and objectives.
- 6.1.6 The financial resources and records.
- 6.1.7 The need to establish operations in the State.
- 6.1.8 Insurance to maintain the Postsecondary Institution's solvency in case of loss by fire, fraud, or other causes to protect the Postsecondary Institution in liability matters, and to assure the Postsecondary Institution's continuity of operation.
- 6.1.9 Funding in the event of closure.
- 6.1.10 Accrediting agency.
- 6.1.11 Organizational pattern and administrative structure.
- 6.1.12 Student services.
- 6.1.13 Admission, retention, and graduation standards.
- 6.1.14 Evaluation of faculty, program, and facilities and resources.
- 6.1.15 Learning resources.
- 6.1.16 Catalog.
- 6.1.17 The address of the person's registered office and the name and address of the person's registered agent for service of process in the State.
- 6.1.18 The disclosure of any criminal history and violations of local, state, or federal law.
- 6.2 The application shall contain the commitments set forth in 14 **Del.C.** §187(b).
- 6.3 The Postsecondary Institution shall submit the application, all required documentation, and the applicable fee either electronically or in hard copy to the Department.

- 6.3.1 The application fee for issuance of a Certificate of Approval for Postsecondary Institutions that did not obtain Degree Granting Authority from the Department prior to the effective date of this regulation is \$10,000.00 in the form of a check made payable to the Delaware Department of Education.
- 6.3.2 The application fee for renewal of a Certificate of Approval for Postsecondary Institutions that did not obtain Degree Granting Authority from the Department prior to the effective date of this regulation is \$5,000.00 in the form of a check made payable to the Delaware Department of Education.
- 6.3.3 There is not an application fee for issuance or renewal of a Certificate of Approval for Postsecondary Institutions in Delaware that obtained Degree Granting Authority from the Department prior to the effective date of this regulation.
- 6.3.4 There is not an application fee for an applicant under subsection 3.3.
- 6.4 The Department or an evaluation team selected by the Department will review the complete application. As part of the review, the Department may require a meeting with the Board of Trustees or the administrative staff, or both, of the Postsecondary Institution.

## **7.0 Approval through reciprocity agreements**

- 7.1 ~~To receive the Department's approval under a reciprocity agreement of which Delaware is a member, Institutions of Higher Education must:~~
  - 7.1.1 ~~Obtain and maintain Degree Granting Authority from Delaware; and~~
  - 7.1.2 ~~Abide by the application process and requirements in accordance with the terms of the reciprocity agreement.~~
- 7.2 ~~Institutions that no longer meet the terms of the reciprocity agreement shall apply for Degree Granting Authority or Operating License.~~

## **7.0 Denial of Application for Issuance or Renewal of a Certificate of Approval**

The Department may deny an application for the issuance or renewal of a Certificate of Approval as provided in 14 Del.C. §190.

## **8.0 Revocation of a Certificate of Approval**

The Department may revoke a Certificate of Approval that has been issued or renewed as provided in 14 Del.C. §190.

## **8.0 9.0 Termination of Degree Granting Authority Approval Status**

- 8.4 9.1 The following are grounds causes for termination of approval for Recognized Applicant, Provisional Approval, or Full Approval status and Operating License:
  - 8.4.4 9.1.1 The Postsecondary Institution does not continue to meet the requirements of this regulation or is not making satisfactory progress towards the next level of recognition; or
  - 8.4.2 9.1.2 The Postsecondary Institution fails to file a progress report; or
  - 8.4.3 9.1.3 The Postsecondary Institution fails to keep the Department informed of changes; or
  - 8.4.4 9.1.4 The Postsecondary Institution fails to request renewal of its status in the required time frame or request timely advancement to next status level; or
  - 8.4.5 9.1.5 The Postsecondary Institution fails to maintain state licensing requirements for applicable offerings. If the Postsecondary Institution offers Degrees, programs or programs of courses that do not lead to professional licensure, the Department may modify the degree-granting authority to include only those programs in compliance with the standards.
- 9.2 When the Department proposes to terminate a Postsecondary Institution's approval status, the Department shall first give written notice to the Postsecondary Institution of the reasons for termination and the opportunity for a hearing before the Secretary. The Postsecondary Institution shall be afforded at least 20 calendar days from the date the notice is mailed to request a hearing. If no written request for a hearing is received by the Secretary, the Postsecondary Institution's approval status is deemed terminated as set forth in the notice and the Department shall notify the Postsecondary Institution of the termination.
  - 9.2.1 Any hearing before the Secretary shall be held within 90 calendar days of the date the Secretary receives a request for a hearing.
  - 9.2.2 Notice of the hearing shall be given at least 20 calendar days before it is held.
  - 9.2.3 The hearing shall be conducted by the Secretary or the Secretary's designee who shall prepare a proposed order for the Secretary's consideration.

9.2.4 The burden of proof shall be on the Department to show by a preponderance of evidence that there is cause for terminating approval status.

~~8.2~~ 9.3 If the Postsecondary Institution's approval status is terminated, the approval status will expire immediately upon initial notification to the Postsecondary Institution by the Department. If an Postsecondary Institution's approval status expires, the Postsecondary Institution shall be required to begin the application process for Recognized Applicant status ~~or an Operating License~~.

~~8.3~~ 9.4 The Postsecondary Institution shall notify students individually, in writing, if the Postsecondary Institution's approval status is terminated ~~or its Degree Granting Authority is revoked~~ at any time.

#### 8.4 Denial and Right to Hearing

~~8.4.1~~ When an application is denied, the Department shall give written notice to the applicant of the denial and the reasons for the denial. The notice of denial shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Secretary within twenty (20) calendar days of receipt of the notice. The appeal before the Secretary or the Secretary's designee shall be based on documentation submitted to the Department by the Institution during the application process. No additional documentation will be considered by the Secretary.

~~8.4.2~~ Hearings shall be conducted in accordance with the Department's Hearing Procedures and Rules.

### **9.0 10.0 Notification List of Approved Postsecondary Institutions**

The Department shall publish a list of all Postsecondary Institutions that have been approved and awarded Degree Granting Authority ~~or an Operating License~~ issued a Certificate of Approval by the Department.

### **40.0 11.0 Disposition of Student Records Ceasing Operation**

Prior to discontinuing ceasing operation ~~or upon dissolution~~, all Postsecondary Institutions shall comply with the requirements of 14 Del.C. §8530 §192.

### **44.0 12.0 Violations of the Law Consumer Fair Practices and Complaints**

~~Violations of the law and regulations relating to Institutions as herein described shall be referred to the Attorney General of the State of Delaware for any action permitted or required by law.~~

12.1 In accordance with 14 Del.C. §193(i), the Department will review any written complaints alleging a violation of 14 Del.C. §§185-194 and will provide any information on potential violations of 14 Del.C. §§185-194 or the Consumer Fraud Act to the Delaware Department of Justice.

12.2 A written complaint will not be processed unless it is complete. In order to be considered complete, the written complaint shall include the statute that is alleged to have been violated; specific details of the alleged violation, including who violated the statute and the date the violation occurred; and the complainant's contact information (i.e., name, address, phone number, and email address). The Department will not address written complaints submitted by an anonymous person or source.

12.3 A written complaint shall be made on the form approved by the Delaware Higher Education Office and submitted to the office by email at [DHEO@doe.k12.de.us](mailto:DHEO@doe.k12.de.us).

5 DE Reg. 859 (10/01/01)

10 DE Reg. 850 (11/01/06)

19 DE Reg. 1078 (06/01/16)

21 DE Reg. 208 (09/01/17)

23 DE Reg. 858 (04/01/20)

26 DE Reg. 429 (12/01/22) (Prop.)